



CUSTOMARY LAND RIGHTS AND GENDER JUSTICE IN EASTERN NIGERIA
AND GHANA

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ABSTRACT

Common approaches to the challenges of tenure discrimination and inequitable land administration system in Nigerian centres on the adoption of statutory legal propositions and judicial proscriptions for the achievement of the desired goals. This entails the adoption and elevation of conventional land administration principles as the ultimate standard for evaluating all other tenurial and land administration systems in Nigeria.

The continued existence of these challenges and emergence of fresh constraints clearly underscore the ineffectiveness of the policy choices and preferred administrative responses to the achievement of desired goals, and the continued reliance on these approaches alone risk marginalising further the voices of local communities, especially women.

In the case of the Igbos of the Eastern Nigeria, this results in failure to address the systemic challenges of tenure insecurity, rural poverty, unsustainable development and continued existence of various outlawed discriminatory customary practices that disinherit and subjugate women. Even the recent Supreme Court's intervention makes negligible impacts as most of these proscribed practices continue to enjoy social legitimacy and remain operational secretly.

Drawing from the outcomes of the recent Ghanaian reform experiences, this thesis looks at the prospects for reformation and statutory recognition of customary tenure system in Eastern Nigeria using the principles of "Responsible Land Management", "Fit-for-purpose (FFP)", "Continuum of land-rights" and "Social Tenure Domain Model (STDM)" land tools. These innovative tools are either implemented together or in parallel.¹ The paper hopes to make its major contribution to knowledge by developing a novel decentralised and hybrid land administration model reflective of social dynamics, cleavages and peculiarities of the Nigerian state. This will provide for the adoption of more realistic, zone-specific, flexible, affordable and scalable land administration system capable of providing secure and equitable land rights for all Nigerians.

¹ Jaap Zevenbergen et al, 'Designing a Land Records system for the poor: Secure land and property rights for all'. UN-HABITAT Report 2 (2012), P. 3- 4.
<https://unhabitat.org/books/designing-a-land-records-system-for-the-poor-secure-land-and-property-rights-for-all/>>. Accessed 02/09/18

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ABBREVIATIONS.

ACHPR	African Charter on Human and People's Rights
ADR	Alternative Dispute Resolution
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CIDA	Canadian International Development Agencies
CLA	Customary Land Authority
CLR	Community Land Records
CLS	Customary Land Secretariats
CPA	Criminal Procedure Act
CPC	Criminal Procedure Code
DFID	Department for International Development (DFID)
FBCP	Foundation for Building the Capital of the Poor
FFP	Fit-For Purpose
FMV	Fair Market Value
GDP	Gross Domestic Product
GLTN	Global Land Tool Network
ICJ	International Court of Justice
ICT	Information Communication Technology
IFPRI	International Food Policy Research Institute
ILD	Institute for Liberty and Democracy
JAP	Justice of Appeal Court
JSC	Justice of Supreme Court
KPI	key performance indicators
LAP	Land Administration Project
LC	Land Commission
LGAF	Land Governance Assessment Framework
NGOs	Non-Governmental Organisations
OASL	Office of the Administrator of Stool Lands
PNDCL	Provisional National Defence Council Law
PTCLR	Presidential Technical Committee on Land reform
RLA	Responsible Land Administration
RLM	Responsible Land Management
SDG	Sustainable Development Goals
STDM	Social Tenure Domain Model

UNDP	United Nations Development Programme
UNFAO	United Nations Food and Agricultural Organisation
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure

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DEDICATION

This work is dedicated to all the disinherited, subjugated and marginalised women out there. Your feeble resistance against obnoxious, discriminatory and inhumane practices of today forms the tiny droplets of strength upon which a whirlwind of emancipation will spring up tomorrow

CHAPTER 1: INTRODUCTION

1.1: SUMMARY

Analysis on African land administration and tenure system is central to the understanding of the quandaries of African underdevelopment as vast majority of the populace depend on subsistent agriculture and social interdependence for their livelihood, even as the agrarian sector constitutes an indispensable element of the states' economic strength. Effective improvement on the agricultural sector through efficient land management and tenure reformation is considered key to growth and development in most of the African states. However, the challenges of dealing with the plurality of land tenure regimes across African states make addressing questions of underdevelopment, gendered tenure insecurity and land reform difficult. Often times, the readily adopted solution to the constraints of poor land and tenure system has always been an outright proscription of any land administration and tenure regime that fails to measure up to the western-styled formal standard, thereby ignoring the functionalities and influences such unrecognised tenure systems and local administrative institutions might have on land management, tenurial practices, tenure security and sustainability of the livelihoods and wellbeing of the local practitioners.

Nigeria is one of the African countries facing the challenges of multiplicity of legal and tenure regimes, tenure insecurity, inequitable land administration and discriminatory customary tenure system. These challenges however increased exponentially following the introduction of the Land Use Act of 1978 which nationalised all land in the country, leaving landowners with usufructuary rights to land. This undermines the premise for effective tenurial hybridity and its functionalities, particularly on the processes for the co-existence of different land tenure regimes. Its effect on women's land rights has been a clear reduction in available opportunities and options for accessing land and other natural resources, particularly within the highly patrilineal rural communities in which culture, religion and heritage dictate the place of a woman and her level of tenure security. The unfortunate and debilitating outcomes of the Land Use Act further exacerbated the very problems it was meant to solve. This new development fuelled a sharp rise in judicial activism on land rights with the intention of using the instrumentalities of the court to purge the customary tenure system of its inherent discriminatory tendencies and correct the ills and injustices of the Act.

Customary tenure regimes and traditional institutions are often criticised for containing discriminatory elements that undermine the enjoyment of the fundamental human rights

of women and other vulnerable members of the society, particularly by perpetuating male dominance and control over land thereby inhibit the ability of women to acquire and keep land assets. Thus, aspects of the customary institutions and tenure arrangements that fail to measure up to the standards of the conventional provisions are often proscribed. The result of such blanket proscription is that the potential of the customary tenure to help improve women's tenure security and livelihood is often missed. This is especially so in the Eastern Nigeria, where distinctive cultural experiences, social peculiarities inform preference for customary tenure system, thus, the need to leverage on its strengths and functionalities in a scalable Continuum of Rights platform while striving towards formal and individual tenure system capable of providing strongest tenure security for all, most especially, the tenurial rights of women and other vulnerable groups in Eastern Nigeria.

The reasons for paying particular attention to the Eastern Nigerian, particularly the Igbo customary tenure system, stems from the avalanche of controversies trailing its operations and perceived discriminatory elements, as well as the inability of the Land Use Act of 1978 (The Act) to articulate a coherent process of administering customary lands and various tenure arrangements characteristic of the indigenous people that inhabit that part of the country. Both the Act and the Limitation Statutes expressly exempt many of these customary tenure systems and arrangements from the control and prohibitions provided by some of their clauses.² The implication of the above is that the operations of most of these peculiar indigenous tenure arrangements of the Igbos are left to fester outside the regulatory control and supervision of the state and the extant laws.

Meanwhile, a brief analysis of the origin and component of the South East zone of Nigeria offers a better understanding and appreciation of the area under study. This also helped to determine the desirability of the proposition for a new distinctive, zone-specific and decentralised land administration model reflective of the local nuances for the region. It is upon the development of this proposed novel land administration model that this thesis made its major contribution to knowledge.

The South Eastern part of is made up of five component States, namely; Abia, Anambra, Ebonyi, Enugu and Imo State, as could be seen from Fig. viii (Map showing the six geo-political zones of Nigeria and the states under them) and is inhabited by the Igbo speaking people with slight variation in their dialect. They speak common

² sec. 24 & 25 of the Nigerian Land Use Act of 1978; see also sec. 67(1) of the Limitation Law Cap. L67, Laws of Lagos state of Nigeria, 2003; s 15(2)(a)

language that forms part of the Kwa group languages in West African.³ Prior to the creation of these States, Nigeria was divided into four regions of Eastern Region, Western Region, Northern Region and Mid-Western Region. Following the failed secession bid by the South Eastern/Biafran secessionists, and the resultant Nigeria/Biafran civil war of 1967- 1970 during which the South Eastern Region sought to form an independent sovereign state of Biafra, and in attempt to weaken the strengths and powers of the then Regional Governments and deter any Region from seceding from Nigeria, these regional blocs were divided into “States Governments”, and over time, the former Eastern Region bloc was further divided into five separate State Governments. This accounts for the homogenous nature of the five South-East states and the Igbo people that inhabit the zone.⁴

This thesis adopts socio-legal and historical perspectives in addressing the core questions relating to customary tenure system in the administration of land matters in Nigeria and the potential for its reformation in the quest for just, equitable and secure tenure for all Nigerians, particularly for women and other vulnerable groups in Eastern Nigeria. Analysis in this respect is deliberately confined to core issues bothering on secure tenurial rights, sustainable rural development and emancipation with less emphasis on technicalities. Thus, the first chapter of this thesis introduces the nature of cultural diversity within Nigeria and the composition of the Nigerian state. It presents a brief history of the South Eastern Zone of Nigeria as well as address Core research

³ Emeasoba, U. R. B, ‘Land Ownership Among the Igbos of South East Nigeria: A Case for Women Land Inheritance ‘, (2012) *Journal of Environmental Management and Safety*, vol. 3. No. 1, pp. 97

⁴ Ibid. Thus, as a result of causes and aftermaths of the Biafran war, 12 States were created in 1967 to replace the Regional components, East-Central State was one of the 12 newly created states with its capital situated in Enugu. In 1976, Imo State was carved out of the then East Central State with its capital in Owerri. Enugu town and environs were latter carved out in 1991 to become a stand-alone State with the capital still in Enugu town, while the remaining part of the former larger Enugu State was renamed Anambra State with the State capital at Awka. Abia State was also created from the then Imo State with its own capital located in Umuahia. However, in 1996, Ebonyi State was again created from some parts of Abia and Enugu States while Abakiliki becomes its new State capital.

questions, preferred methodologies, as well as the scope and limitations of the research. Chapter 2 focuses on historical perspectives on African land tenure system and the colonial experiences, with reference to the changing meanings and value of land, processes of land acquisition, ownership and management, and the emergence of a dual legal and administrative System with respect to land, with particular emphasis on gender and tenure security. Further, the third chapter deconstructs the nature of plurality in Nigeria's land tenure system by analysing the differences between customary, Islamic, received English, and indigenous laws, which reveals how women face different challenges depending on their socio-cultural, tribal and religious affiliations, and the type of law operational in relation to land and its administration in Nigeria. Chapter 4 then prioritises the discussion on intestacy and discriminatory tenure rights in relation to the three major ethnic groups in Nigeria (i.e. Igbo, Hausa and Yoruba) and how women's access to land is impaired by different approaches within the range of Nigeria's indigenous tenurial practices. It further examines the contributions of legal activism to the enthronement of secure and equitable land regime in Nigeria thereby revealing the challenges associated with proclivity to legal approaches to customary reformation, concerns over the sustainability of the positive achievements of the judicial interventions, and the debilitating effects of these constraints to the Nigerian land reform agenda, thus, the continued call for land reform in Nigeria. The systematic deliberation on the processes and outcome of the judicial interventions however revealed the absence of any systematic impact-assessment-based researches, academic documentations or fieldworks capable of determining the level of compliance, receptibility, implementations and the overall effects of the recent legal breakthroughs to the customary land and tenure security questions. It is upon this analytical revelation that the thesis made its first original contribution to knowledge by calling for further researches in this regard.

In the light of the failure of the conventional and judicial interventions to yield expected results, chapter 5 therefore examines various available options and perspectives for future reformation of the Nigerian land administration system, with reference to case examples from different African countries, which leads to a conclusion that an in-depth case study analysis is needed. Chapter 6 deals with the trajectories of legal reform of Nigeria's land law and tenure system, settling on the prospects for new reform in Nigerian land sector. This historical exploration uncovers the limitations inherent in both the processes and preferred policy measures, as well as the inability of either the customary land tenure system or the conventional system to guarantee equitable and

secure tenure system for all in Nigeria. This accounts for the continued demand for further land reforms in Nigeria and the need for an examination of the successful experiences from other African states facing similar challenges. Chapter 7 introduces the background and context of land reform in Ghana from a historical perspective with the intention of harnessing profitable takeaways to aid the proposed Nigerian land reform agenda. It looks specifically at the Ghanaian Land Administration Project (LAP) in relation to redressing gender discrimination, provision of decentralised and equitable land administration system and tenure security for the citizenry. Chapter 8 then uses the 8R Matrix approach to compare the cases of Ghana and Nigeria giving key takeaways for the development of the new approach to reforming Eastern Nigeria's land administration system and its integration within the formal and national approach that currently is in place. This provides for the development of a novel, responsible and fit-for-purpose land administration system reflective of the social dynamics, local nuances and zonal peculiarities of the Eastern Nigeria. The development of this novel, more realistic, hybrid, decentralised, zone-specific, flexible, cost effective, scalable and fit-for-purpose land administration system reflective of local nuances forms the main crux of the thesis' original contribution to knowledge. Chapter 9 builds on these foundations to present an integrated framework for the reform while the last part of the thesis finally presents the summative conclusion on these approaches, as well as the expected outcome and benefits of the proposed novel land model to secure tenure rights of women and other vulnerable groups in Eastern Nigeria in particular, and the Nigerian State at large.

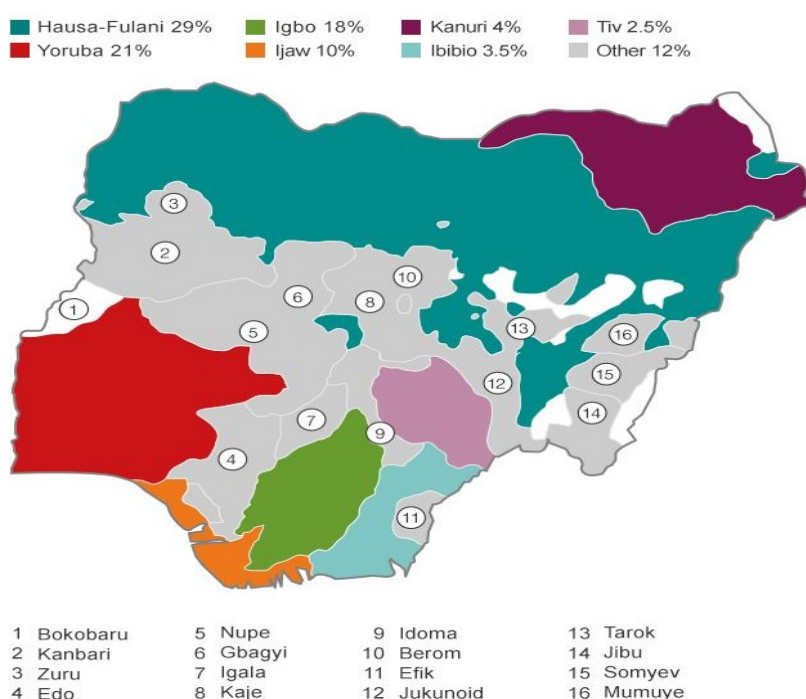
1.2: NIGERIAN STATE AND THE CHALLENGES OF DIVERSITY

An examination of the definitive elements of the Nigerian state and the constraints of her diverse composition would be an ideal starting point to prepare grounds for better understanding of the peculiar complexities that characterise her statehood. Such an understanding would also be necessary for the determination of administrative institutions' effectiveness, the desirability of state's preferred policy choices and the need for paradigm shift. Nigeria is a complex heterogeneous entity with numerous tribal, linguistic, ethnic, sub-ethnic and religious divides. However, three 'hegemonic' ethnic groups (Igbo, the Yoruba and the Hausa/Fulani) dominate the other groups.⁵

⁵ The Igbo ethnic group occupy the South-Eastern axis of Nigeria. They are predominantly Christians, and the area occupied by them is often referred to as Iboland. Yoruba people are in the South-West and are made up of large numbers of both Christians and Muslims. While the Hausa/Fulani ethnic group occupy the Northern part

Ethnic groups in Nigeria occupy clearly defined geographical areas which they have domiciled for centuries,⁶ [see figure i below]. With an estimated population of over 198 million which accounts for about 2.35% of global population,⁷ Nigeria remains the most populous black nation in the world.⁸ Nigeria's size and profound diversity make it practically impossible for one to make a generalised proposition on anything concerning the country. This fact should underline our perceptions as we explore the network of definitive complexities that characterise the Nigerian state and her land administration system.

FIG. i: MAP SHOWING MAJOR ETHNIC GROUPS AND DIVERSITIES IN NIGERIA



Source: (Mikailu, Naziru, BBC News. 5th May 2016)

of Nigeria and are predominantly Muslims. See Gender in Nigeria Report 2012: Improving the Lives of Girls and Women in Nigeria, p. 5.

<<https://www.britishcouncil.org/sites/default/files/british-council-gender-nigeria2012.pdf>>. Accessed 10/01/17

⁶ Ibid. See also Gannon, Martin J, *Understanding Global Cultures: metaphorical journeys through 28 nations, clusters of nations and continents*'. (3rd edn. Sage, 2004) p. 255

⁷ Nigerian Population 2018 (Demographics, Maps, Graphs).

<<http://worldpopulationreview.com/countries/nigeria-population/>>. Accessed 05/01/2019

⁸ Nigeria Demographic Profile 2016,

<www.indexmundi.com/nigeria/demographics_profile.html>. Accessed 01/02/2017

Attempts at compartmentalizing Nigerians along their ethnic and tribal backgrounds have proved highly challenging due to variations on the modalities for the identification and attribution of ethnic identities. Thus, the precise number of available ethnic groups in Nigeria remains unknown because ethnic groups in Nigeria are determined from the combination of divergent definitive attributes and backgrounds which often includes ethno-religious and cultural affinity, similarities in languages, dialects and common territorial locations.

More so, other subjective factors like the fluidity of group's boundaries; minute sub-groups that lack due National recognition may remain very important at the grassroots level; political and economic considerations capable of influencing a group's identity and affiliation may in some cases be subsumed under an imposed border division, thereby eclipsing identities of the concerned sub-groups.⁹ As a result of these realities, the determination of the clear number of Nigerian ethnic groups remains a matter of academic debates and contestations.¹⁰ Nigeria is a "cleft" culture,¹¹ because "ethnic groups in Nigeria are so clearly separate from one another in terms of values that it is difficult to form a national culture".¹² This also is believed to have informed the position of Late Chief Obafemi Awolowo (the sage) who in his celebrated speech stressed that;

Nigeria is not a nation. It is a mere geographical expression. There are no Nigerians' in the same sense as there are 'English,' 'Welsh' or 'French.' The word Nigerian' is merely a distinctive appellation to distinguish those who live within the boundaries of Nigeria and those who do not.¹³

Irrespective of the challenges of these diversities and unencouraging national identification, one attribute common to almost all the groups is that women face various degrees of discrimination, lack security of tenure and inheritance rights.

⁹ Mustapha, A. R, 'Ethnic Minority Groups in Nigeria: Current Situation and Major Problems' [2003]. P. 1-2. <http://api.ning.com/files/Z-dPtc1CmKOgJR-bmTRwSQ23eI7fG6YJB2sM3e-I5-LWkd3GavclvK2q6iIawXG9S3mEv7H1EPgKcJ*nQE2707pWnJnVovK/ETHNIC_MINORITY_GROUPS_IN_NIGERIA.pdf>. Accessed 28/02/2018

¹⁰ Mustapha, A. R, 'Ethnic Minority Groups in Nigeria'. P. 1-2

¹¹ A cleft nation is one in which the major ethnic groups are so clearly separate from one another in terms of values that it is difficult to form a national culture.

¹² Gannon, Martin J, *Understanding Global Cultures*. p. 255

¹³ Chief Obafemi Awolowo, *Path to Nigerian Freedom* (Faber & Faber, 1947)

In view of the above constraints and the futility of making a generalised proposition on matters relating to Nigeria, this thesis bases its analysis on the land administration models and tenure systems that exist within the geographical spaces of the three hegemonic ethnic groups (Igbo, Yoruba and Hausa/Fulani) with particular attention on the Igbos of Eastern Nigeria and their prevailing tenure system.

1.3: LITERATURE REVIEW

The key question that informed this research bothers on the extent to which the adoption of decentralised and innovative land administration model, as well as the reformation and statutory recognition of customary tenure rights could help to promote sustainable rural development and security of tenure for all Nigerians, particularly for women and other vulnerable groups in Eastern Nigeria?. Attempt at investigating this has revealed polarised opinions and diversified perspectives. However, for the purpose of clarity and sequence, analysis on available scholarly positions will be compartmentalized into subgroups. These include the exploration of narratives on the understanding and valuation of land both from customary and common law perspectives; an examination of the definitive attributes of customary law and tenure system, vis-s-vis colonial transformations and imposed limitations thereof; inherent discriminatory attributes of various customary tenures and the ineffectiveness of preferred conventional approaches. It will finally look at current innovative dimensions to reform and explain the gap in the available literature that the research is out to fill.

PERSPECTIVES ON THE MEANING, AND VALUE OF LAND IN AFRICA

The definitive elements of land and the variations in the conceptualization of what constitutes land within the customary law and the common law parlance was broadly captured and interrogated in various available literatures. Smith I. O,¹⁴ Epiphany Azinge,¹⁵ Elias T. O,¹⁶ and Jegede M. I,¹⁷ all offered perspectives on definition of land in relation to its varied and peculiar attributes and valuations by the end users. They also established clear distinction between what is generally perceived as land and what actually connotes land and tenure system.

¹⁴ Smith, I. O. *practical approach to Law of Real Property in Nigeria* (2nd. ed. Ecowatch Publication Nig. Ltd, 2007).

¹⁵ Epiphany Azinge et al, *Restatement of Customary Law in Nigeria* (Nigerian Institute of Advanced Legal Studies, Abuja. 2013)

¹⁶ Elias, T. O, *Nigeria Land Law*. (4th edn. London Sweet and Maxwell, 1981)

¹⁷ Jegede, M. I, *Land Law and Development* (Lagos University Press, 1981).

According to them, thus, pre-colonial traditional and customary law understanding of land differs greatly from common law perspective.¹⁸ This appears short of the provisions of the English Common law maxim of *quicquid plantatur solo, solo cedit* which provides that whatsoever that is affixed to the soil, in contemplation of the law, is automatically part of the land. Thus, Kunle Aina¹⁹ declared that the constituents of land and understanding of its meaning under common law provision goes deeper and appears more comprehensive as it encompasses both the soil, every other natural and artificial attachments to the soil which include houses, trees, rocks, rivers, dams, streams and all abstract entities, rights and interests like incorporeal hereditaments. The usefulness of land to the survival of mankind has been roundly acknowledged. The World Bank,²⁰ Enemark, S., McLaren, R., & Lemmen, C.,²¹ Annika Rudman²² and the GLTN/UN-HABITAT,²³ have all acknowledged the centrality of land to the sustainable development of states and societies. Land has primarily been identified as a major source of food, shelter, a strong ground for socio-cultural, economic and religious practices and advancement, while tenure security is primarily projected as an inevitable tool for the achievement of the Sustainable Development Goals (SDG); for poverty eradication and achievement of gender equality, food security and sustainable ecosystem, societal peace and cohesion, survival of the rural populace; particularly women, children and other vulnerable members of the society. This, according to Enemark, S., McLaren, R., & Lemmen,²⁴ provides insight into reasons why about one

¹⁸ See also R. W. James, *Modern Land Law of Nigeria* (university of Ife Press, Ile Ife 1973) p. 14.

¹⁹ Kunle Aina et al, Introduction/Historical Evolution of Land Law in Nigeria. P. 18

²⁰ World Bank publication; “Atlas of Sustainable Development Goals 2017: From World Development Indicators”. Indicator 5a. p.109.

<<https://openknowledge.worldbank.org/handle/10986/26306>>. Accessed 01/08/2018.

²¹ Enemark, S., McLaren, R., & Lemmen, C., Fit-For-Purpose Land Administration: Guiding Principles for Country Implementation. (2016) Nairobi: UN-Habitat, Global Land Tool Network. P. 14. <<https://unhabitat.org/books/fit-for-purpose-land-administration-guiding-principles-for-country-implementation/>>. Accessed 06/04/2018

²² Annika Rudman, ‘Genderized land reform and social justice; A gender perspective on the formalization of communal land tenure’, in Ben Chigara (eds), *Re-conceiving property rights in the New Millennium: Towards a New Sustainable Land Relations Policy* (Taylor & Francis Ltd, 2012). P. 8

²³ GLTN/UN-HABITAT; Measuring Land Tenure Security with SDG Indicator 1.4.2. <<https://gltn.net/home/2017/05/25/measuring-land-tenure-security-with-sdg-indicator-1-4-2/>>. Accessed 04/06/2018

²⁴ Enemark, S., McLaren, R., & Lemmen, C. Fit-For-Purpose Land Administration: Guiding Principles for Country Implementation. P. 14

third of the 17 goals of the Sustainable Development Goal (SDG), together with its 169 targets and accompanying indicators border on land related issues.

Despite the established importance and values of land, various customary land administration and tenure systems across Africa, particularly in Nigeria, discriminates against women's property rights based on gender.

CUSTOMARY LAW, LAND TENURE AND COLONIAL TRANSFORMATIONS

Elias²⁵ and Smith²⁶ offer deep understanding on the meaning of customary law and its regulatory roles. According to Malemi Ese,²⁷ customary law contains the “unrecorded traditions and history of the people, practiced from the dim past and which has grown with the growth of the people to stability and eventually becomes an intrinsic part of their culture. It is a usage or practice of the people which by common adoption and acquiescence and by long and unvarying habit has become compulsory and has acquired the force of law with respect to the place or the subject matter to which it relates”. Various authors, including Malemi Ese,²⁸ Muna Ndulo,²⁹ and Allot A. N.,³⁰ traced the evolutionary trajectories of customary law and the influence of colonial experimentations on its scope and operation in the light of land administration and tenure system in Nigeria. They explored the origin of customs and the total reliance on its provisions prior to the inception of colonialism. Thus, pre-colonial communities, tribes and ethnic groups that occupied the geographical space known now as Nigeria had ways of administering themselves and ensuring peaceful coexistence and orderliness before the advent of colonialism. These formed their cultures and traditions otherwise known as customs. It was through these that the indigenous customary law provisions evolved.³¹ They regulated activities bothering on marriages and divorce, land acquisition, management, appropriation which follows the traditional canon of descent, and the general wellbeing of the members of a given community, ethnic or tribal group. Thus, Janet Pritchard et al identified customary law as an established community rules

²⁵ Elias, T. O, *Nigeria Land Law*. (4th edn. London Sweet and Maxwell, 1981)

²⁶ Smith, I. O. *practical approach to Law of Real Property in Nigeria*.

²⁷ Malemi Ese, *The Nigerian Legal Method* (Princeton pub., 2010) p. 154

²⁸ *ibid*

²⁹ Muna Ndulo, African Customary Law, Customs, and Women's Rights, 18 IND. J. GLOBAL LEGAL STUD. 87, 88 (Winter 2011)

³⁰ Allott, A. N, ‘Towards the Unification of Laws in Africa’, 14(2) INT'L & COMP. L. Q. 366, 370 (Apr. 1965)

³¹ Muna Ndulo, African Customary Law, Customs, and Women's Rights, 18 IND. J. GLOBAL LEGAL STUD. 87, 88 (Winter 2011)

and processes governing the actions and relationships between community members in one hand, and between community members and outsiders.³² However, Abdulmumini A. Oba, stressed that the implication of customary law's local and communal identity is that its juridical scope of control and operations of its institutions is dependent upon an individual's membership of the ethno-tribal, religious and linguistic affiliation of the subjects. Thus, affairs of distinctive pre-colonial nation states were regulated by equal number of divergent and distinct customary legal principles.³³

Emery Vanessa³⁴ and Woodman, G. R.³⁵ painted a picture of how cumbersome and unacceptable this multiplicity and proliferation of pre-existing customary administrative rules, institutions and governance frameworks were to the colonial masters at the inception of colonialism as they faced the challenges of administering the distinct ethno-tribal and religion nation states separately. The inherent difficulties and futility of the efforts informed the lumping together of various pre-colonial traditional nation states for administrative convenience within a newly imposed territories and artificial borders. This action gives insight into why various African nations merely represent an amalgam of divergent and strange bed fellows. In relation to Nigeria, Chief Awolowo opined that the word Nigeria only represents a distinctive appellation to distinguish those who live within the imposed artificial borders and those who do not.³⁶ Mustapha, A. R.³⁷ also explored the difficulty in trying to compartmentalise Nigerian ethno-tribal,

³² Janet Pritchard et al. 'Securing community land and resource rights in Africa: A guide to legal reform and best practices' (2014)

<<http://www.forestpeoples.org/sites/fpp/files/publication/2014/01/securingcommunitylandresourcesguideenglishjan2014.pdf>>. Accessed 02/08/2018

³³ Abdulmumini A. Oba, 'The Future of Customary Law in Africa', in Jeanmarie. Fenrich, Paolo Galizzi, and Tracy Higgins (eds.), *The Future of African Customary Law* (Cambridge University Press 2011) P. 58, 62–65

³⁴ Emery Vanessa, 'Women's Inheritance Rights in Nigeria: Transformative Practices'. P. 23- 27. <www.law.utoronto.ca/documents/ihrp/HIV_emery.doc>. Accessed 20/09/2016

³⁵ Woodman, G. R. 'A Survey of Customary Laws in Africa in Search of Lessons for the Future', in Jeanmarie. Fenrich et al (ed), *The Future of African Customary Law* (Cambridge University Press 2011). P. 9, 30

³⁶ Chief Obafemi Awolowo, *Path to Nigerian Freedom* (Faber & Faber, 1947)

³⁷ Mustapha, A. R, 'Ethnic Minority Groups in Nigeria: Current Situation and Major Problems' [2003]. P. 1-2. <http://api.ning.com/files/Z-dPtc1CmKOgJR-bmTRwSQ23eI7fG6YJB2sM3e-I5-LWkD3GavclvK2q6iIawXG9S3mEv7H1EPgKcJ*nQE2707pWnJnVovK/ETHNIC_MINORITY_GROUPS_IN_NIGERIA.pdf>. Accessed 28/02/2018

linguistic and religious divides into coherent entity, leading to Gannon Martins³⁸ calling Nigerian state a “cleft” culture,³⁹

Woodman noted the inevitability of creation of new legal regimes to regulate the new artificial borders and the customary institutions thereof as aspects of the customary provisions were condemned for accommodating discriminatory and undemocratic attributes. The adoption of democratic principles as a tool for customary validation is unfortunate. Because customs are the condensed wisdoms of past generations, which are embodied into the living fabrics of the present-day existence, deriving its validity from societal acknowledgement. As noted by Paul Vinogradoff,⁴⁰ Peter Orebech et al,⁴¹ and Jes Bjarup,⁴² the notion that customary law provisions are unfit for societal regulation on the claim of its undemocratic nature is erroneous as social acceptability or common popular will accords validity to customary norms and statutory legal provisions alike. Therefore, “inasmuch as statutes themselves are binding for no other reason than because they are accepted by the judgement of the people, so anything whatever which the people show their approval of, even where there is no written rule, ought properly to be equally binding on all; what difference does it make whether the people declare their will by their votes, or by positive acts and conducts”⁴³

That said, the new legal regime placed limits on the scope of operation and jurisdiction of the customary law principles. Land administration and tenure system remain part of the areas customary laws were allowed to regulate albeit with some limits. In relation to Nigeria, Emery Vanessa⁴⁴ stressed on the colonial masters’ eagerness to address concerns arising from the existence of multiplicity of legal provisions on a given jurisdiction, thus, they spelt out the parties and exact subject matters to be covered by

³⁸ Gannon, Martin J, *Understanding Global Cultures: metaphorical journeys through 28 nations, clusters of nations and continents*. (3rd edn. Sage, 2004) p. 255

³⁹ A cleft nation is one in which the major ethnic groups are so clearly separate from one another in terms of values that it is difficult to form a national culture.

⁴⁰ Paul Vinogradoff, *Common sense in law* (Oxford University Press, 1959)

⁴¹ Peter Orebech et al, ‘The Place of Customary Law in Democratic Societies’, in *The Role of Customary Law in Sustainable Development*, (Cambridge University Press, 2005) page 297

⁴² Jes Bjarup, ‘Social Interaction: the foundation of Customary Law’, in Peter Orebech et al (ed), *The Role of Customary Law in Sustainable Development*, (Cambridge University Press, 2005) page 139

⁴³ Ibid.

⁴⁴ Emery Vanessa, ‘Women’s Inheritance Rights in Nigeria: Transformative Practices’. pp. 23.

customary law jurisdictions and introduced a validity test tool known as “repugnancy test” upon which the validity and applicability or otherwise of any given customary law provision is to be ascertained.⁴⁵ However, as stated by Jeanmarie Fenrich et al,⁴⁶ these transformations and limitations imposed on the customary law jurisdiction and applications subsist beyond the colonial era, as post-colonial states chose to maintain the status quo. Despite these limitations against the operations of customary law principles, its provisions still guide the conducts of large number of indigenous populations. This is owing to the fact that the limited areas of jurisdiction left to the customary law principles are matters of great personal importance which are inevitable for the survival and peaceful co-existence of vast majority of indigenous populace.

CUSTOMARY TENURE DISCRIMINATIONS AND REFORM APPROACHES

Despite the limitations to the scope and application of customary law principles due to the influence of the repugnancy test doctrine, it has continued to play significant roles in the lives of large segment of the Nigerian populace. This, according to Jeanmarie Fenrich et al,⁴⁷ is because the limited areas covered by customary law jurisdiction are mostly those areas that greatly impact on daily lives of vast majority of the populace, particularly the livelihood and survival of women and other vulnerable groups.

The Nigerian customary legal provision particularly contains customary land tenure principles which regulate land holding common to traditional Nigerian society. It is derived from the people's customary practices and made applicable by various Courts in Nigeria. Kunle Aina,⁴⁸ therefore defined land tenure system as a body of rules governing access to land, and relationships that exist between landowners and the community within which land is located on one hand, and other parties having superior title to the land. One's interests in land is conditioned by the framework of tenure system in operation within the community, which in turn reflects the socio-cultural, political, religious and economic peculiarities of the concerned community. Abdullah

⁴⁵ Supreme Court Ordinance No. 4 of 1876, 19 (1) Laws of the Colony of Lagos (rev. ed. 1901).

⁴⁶ Jeanmarie Fenrich et al. ‘The Future of African Customary Law’, in Jeanmarie Fenrich, Paolo Galizzi, and Tracy Higgins (ed), *The Future of African Customary Law* (Cambridge University Press 2011) P. 1- 2

⁴⁷ Jeanmarie Fenrich et al., Introduction, in *The Future of African Customary Law*. P. 1- 2

⁴⁸ Kunle Aina et al, Introduction/Historical Evolution of Land Law in Nigeria. P. 3

and Hamza,⁴⁹ Emeasoba,⁵⁰ Babatunde Oni,⁵¹ Onuoha,⁵² Antwi-Agyei,⁵³ and Darkwah Samuel Antwi et al,⁵⁴ established the existence of varied forms of discriminatory land tenure and administration systems in Nigeria and Ghana, and warned that the continued existence of these discriminatory practices and the unwholesome adoption and elevation of western-style formal land administration and tenure system without recourse to the social peculiarities have negative effects and implications on the development and sustainability of the concerned states.

Martin Dada,⁵⁵ and Olusola Atitola,⁵⁶ offered a historical synopsis of the various reform programmes that have been carried out in Nigeria and reasons for their unsuccessful outcomes. Otubu Akintunde⁵⁷ particularly examined the implications of the Land use Act of 1978 to land tenure questions in Nigeria, even as a number of high profile decided cases establish the supreme courts uncompromising stance against attempts to clamp down on the discriminatory elements of various customary tenure

⁴⁹ Abdullah J. Hussaina and Hamza Ibrahim, 'women and Land in Northern Nigeria: The Need for Independent Ownership Rights'. In L. Muthoni Wanyeki (ed), *Women and Land in Africa: culture, religion and Realising Women's Rights*. (Zed Books Ltd, 2003)

⁵⁰ Emeasoba, U. R.B. 'Land Ownership among the Igbos of South East Nigeria; A Case for Women Land Inheritance,' (2012) *Journal of Environmental Management and Safety*, Vol. 3 No. 1. PP. 97- 117

⁵¹ Babatunde Oni, "The Right of Women to Inherit Under Nigerian Law: An Evolution", *Nigerian Journal of African Law* (2008) 2 NJAL p. 40-41

⁵² Onuoha, R. A, 'Discriminatory Property Inheritance under Customary Law in Nigeria: NGOs to the Rescue'. *The International Journal of Not-for-profit Law*, Volume 10, Issue 2, April 2008. <www.icnl.org/research/journal/vol10iss2/art_4.htm>. Accessed 20/09/2015

⁵³ Antwi-Agyei, P. et al, 'Impacts of land tenure arrangements on the adaptive capacity of marginalized groups: The case of Ghana's Ejura Sekyedumase and Bongo districts'. (2015) *Land Use Policy*, 49, (203-212).

⁵⁴ Darkwah Samuel Antwi et al. 'Analysis of Land Tenure Systems and its Relationship with Productivity in the Agricultural Sector in Ghana'. (2015) *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis*, 63(3): 893–901. At 894. <file:///C:/Users/USER/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/actaun_2015063030893.pdf>. Accessed 03/01/2018.

⁵⁵ Martin Dada, 'Nigeria: Land Reform- the lingering debate'. *AfricaFiles* (2010) <<http://www.africafiles.org/article.asp?ID=22723>>. P. 12. Accessed 28/11/17

⁵⁶ Olusola Atitola, 'Land Administration Reform in Nigeria: Issues and Prospects'. Invited paper, FIG Congress, Sydney, Australia, 11- 16 April 2010, <https://www.fig.net/resources/proceedings/fig_proceedings/fig2010/papers/inv04/inv04_atilola_4758.pdf>. Accessed 14/12/2017.

⁵⁷ Otubu, Akintunde 'Land reform and the Future of Land Use Act in Nigeria'. <https://www.academia.edu/1318346/LAND_REFORMS_AND_THE_FUTURE_OF_LAND_USE_ACT_IN_NIGERIA>. Accessed 15/09/2018

practices that violate women's property rights on gender considerations.⁵⁸ However, *mojekwu v. mojekwu*⁵⁹ case has stood out as a central rallying point for contemporary land activism in Nigeria. Unfortunately, the positive pronouncement by the Appeal court in respect of the above case could not last long as the supreme court also ruled against the decision in *Mojekwu v. iwuchukwu*,⁶⁰ thereby unceremoniously deflating expectations for a lasting solution to the discriminatory tenure impasse through over three decades of legal activism.

Ubink, Janine⁶¹ and Kasanga⁶² and Kojo Sebastian Amanor⁶³ offered insight into Ghanaian land tenure system and reforms from the colonial era till present, while Odame Lardi⁶⁴ and Amewu⁶⁵ x-rayed the useful outcome of the recent Ghanaian Land administration Project, pointing out the key takeaways that can enrich reform package of states desirous of embarking on fresh reform exercises.

⁵⁸ *Nzekwu v. Nzekwu* (1989) 3 SCNJ 167, (1989) NWLR (pt. 104) 373; *Nezianya v. Nezianya* (1963) 1 All N.L.R 352; *Nezianya v. Okagbue & Ors* (1963) 1 A.N.L.R. to mention but a few.

⁵⁹ (1997) 7 N.W.L.R. (Pt. 512)

⁶⁰ (2004) 4, S. C. (pt.11)

⁶¹ Ubink, Janine, *Legalising Customary land Tenure in Ghana: The case of Peri-Urban Kumasi*, in J.M. Ubink, A.J. Hoekema, W.J. Assies (ed) *Legalising Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America* (Leiden University Press, 2009).

⁶² Kasanga, K. and Kotey, N. A., 'Land Management in Ghana: Building on Tradition and Modernity'. (2001) International Institute for Environment and Development, London. <<http://pubs.iied.org/pdfs/9002IIED.pdf>>. Accessed 01/01/2018. See also Kasanga, Kasim, 'Land administration Reforms and Social Differentiation: A Case of Ghana's Land Commission'. IDS Bulletin Vol. 32 No. 1 2001.

⁶³ Kojo Sebastian Amanor, 'Securing Land Rights in Ghana', in J.M. Ubink, A.J. Hoekema, W.J. Assies (ed) *Legalising Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America*. (Leiden University Press, 2009).

⁶⁴ Odame Lardi. W, 'Ghana's Land Administration Project: Accomplishments, Impacts and the Way Ahead'. (2011) World Bank Conference on Land and Poverty Reduction, the World Bank Washington D.C. 18- 20 April 2011. <<file:///C:/Users/USER/Documents/GHANA'S%20LAND%20ADMINISTRATION%20PROJECT%20ACCOMPLISHMENTS,%20IMPACTS,%20AND%20THE%20WAY%20AHEAD.pdf>>. Accessed 05/03/18.

⁶⁵ Amewu, p. J, 'Land Bill 2017; Ministry of Land and Natural Resources'. (2017) <<http://www.ghanalap.gov.gh/files/CABINET-APPROVED-LAND-BILL.pdf>>. Accessed 01/01/2018.

Cotula, L et al,⁶⁶ Quan, J and Toulmin,⁶⁷ Walker Cherryl,⁶⁸ and Byamugisha, F. F. K⁶⁹ also provides robust examination and analysis on various forms of reform and their ability to engender improvements to land administration and tenure security drive particularly for women, the rural poor and the vulnerable groups in the society. However, Hernando de Soto's⁷⁰ land title and registration reform prognostication was roundly dismissed by Robert Home⁷¹ for its inability to anticipate the peculiar challenges that condition African land administration and tenure system, and the peculiar meaning and value accorded to land by Africans which transcends economic valuation.

Lemmen Christiaan et al⁷² points out that whereas many tenure rights are captured within the framework of formal legal provisions, there exist also plethora of other tenurial rights that exist outside the confines of formal law provisions, but performs invaluable roles in the livelihood, survival and sustenance of the practitioners. These rights enjoy social legitimacy even in the face of non-recognition or even legal proscriptions by the states. Epiphany Azinge et al listed some of these distinctive customary interests in relation to Nigerian land tenure system to include Kola tenancy, customary or usufructuary mortgage, customary pledge and customary tenancy.⁷³ The

⁶⁶ Cotula, L., et al., 'Land Tenure and Administration in Africa: Lessons, Experience and Emerging Issues'. (2004) International Institute for Environment and Development, London. P. 1. <<http://pubs.iied.org/pdfs/9305IIED.pdf>>. Accessed 15/05/17

⁶⁷ Quan, J and Toulmin, C. 'Formalising and securing land rights in Africa: overview', in *Land in Africa: Market asset or secure livelihood?* Proceedings and summary of the conclusions from the land in Africa conference held in London, November 8-9, 2004. Julian Quan et al (ed). <<http://pubs.iied.org/pdfs/G00166.pdf>>. Accessed 20/05/17

⁶⁸ Walker Cherryl, 'land reform in Southern and Eastern Africa; Key Issues for Strengthening Women's Access to and Rights in Land' (2002) FAO Report. <<http://jurisafrika.org/docs/statutes/Walker+on+Women%27s+access+to+Land.pdf>>. Accessed on 1/06/2016.

⁶⁹ Byamugisha, F. F. K, 'Securing Africa's Land for Shared Prosperity: A Program to Scale Up Reforms and Investments. Africa Development Forum series'. (2013) Washington, DC: World Bank. P. xv. <<https://openknowledge.worldbank.org/bitstream/handle/10986/13837/780850PUB0EP100LIC00pubdate05024013.pdf?sequence=1&isAllowed=y>>. Accessed 30/05/2018.

⁷⁰ De Soto, Hernando, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. (Basic Books, 2003)

⁷¹ Robert Home, 'Culturally Unsited to Property Rights?: Colonial Land Law and African Societies'. (2013) *Journal of Law and Society*, Vol. 40, Number 3.

⁷² Lemmen, Christiaan et al., 'Guiding principles for building fit-for-purpose land administration systems in less developed countries: providing secure tenure for all'. (2016) World Bank Conference on Land and Poverty", The World Bank- Washington DC, March 14- 18, 2016. P. 6

⁷³ Epiphany Azinge et al, *Restatement of Customary Law of Nigeria*. P. 242- 250

dangers inherent in outright proscription of customary land administration and tenure regimes that fail to measure up to the western-styled formal standard, thereby ignoring the functionalities and influences such unrecognised tenure systems and local administrative institutions plays on land management, tenure practices, security and sustainability of the livelihoods and wellbeing of the local practitioners were noted.⁷⁴

TOWARDS A NEW APPROACH TO TENURE REFORM

Continuous existence of the identified land constraints, tenure challenges and emergence of new problems has resulted to urgent calls for the development and adoption of new approaches. Walter et al,⁷⁵ Lemmen Christiaan et al,⁷⁶ Enemark Stig et al,⁷⁷ Jaap Zevenbergen et al,⁷⁸ and Enemark, S and McLaren, R⁷⁹ are among scholars that provide analysis on recent initiatives towards the development and adoption of appropriate, innovative, responsive or responsible land administration system capable of delivering land rights to all, particularly for women and other vulnerable groups in developing countries. Chigbu and De Vries⁸⁰ 8 principles of Responsible Land Administration and the GLTN/UN-HABITAT's SDG indicator 1.4.2⁸¹ also provide

⁷⁴ Lemmen, Christiaan et al., 'Guiding principles for building fit-for-purpose land administration systems in less developed countries

⁷⁵ Walter T. et al, 'Towards Responsible Land Administration', in *Advances in Responsible Land Administration*. Jaap Zevenbergen, Walter T. de Vries and Rohan M. Bennett (ed) (Taylor and Francis, 2016)

⁷⁶ Lemmen, Christiaan et al., 'Guiding principles for building fit-for-purpose land administration systems in less developed countries: providing secure tenure for all'. (2016) World Bank Conference on Land and Poverty", The World Bank- Washington DC, March 14- 18, 2016.

⁷⁷ Enemark Stig et al, 'Fit-For-Purpose Land Administration'. (2014) Joint FIG/World Bank publication.

<<http://www.fig.net/resources/publications/figpub/pub60/Figpub60.pdf>>. Accessed 15/07/2018.

⁷⁸ Jaap Zevenbergen et al, 'Designing a Land Records system for the poor: Secure land and property rights for all'. UN-HABITAT Report 2 (2012), <https://unhabitat.org/books/designing-a-land-records-system-for-the-poor-secure-land-and-property-rights-for-al/>>. Accessed 02/09/18

⁷⁹ Enemark, S and McLaren, R. 'Implementing Fit-For-Purpose Land Administration at Country Level'. FIG Working Week 2017. Surveying the World of Tomorrow- From Digitalisation to Augmented Reality. Helsinki, Finland, May 29–June 2, 2017. <http://www.fig.net/resources/proceedings/fig_proceedings/fig2017/papers/ts05a/TS05A_enemark_mclaren_8704.pdf>. Accessed 07/07/18.

⁸⁰ de Vries, T. W., & Chigbu, E. U. 'Responsible land management- Concept and application in a territorial rural context'. P. 72

⁸¹ GLTN/UN-HABITAT; Measuring Land Tenure Security with SDG Indicator 1.4.2. <<https://gltn.net/home/2017/05/25/measuring-land-tenure-security-with-sdg-indicator-1-4-2/>>. Accessed 04/06/2018.

sophisticated tool of analysis and measurement for examining the responsiveness and gender dimensions of previous reform approaches in Nigeria and Ghana with a view to harnessing useful tips for country specific future reform programmes.

The Fit-for purpose land tool, Continuum of Rights concept and the Social Domain Model innovative tool developed and advocated by these scholars helped in providing robust guides and framework for the development of novel, more realistic, hybrid, decentralised, zone-specific, flexible, cost effective, scalable and fit-for-purpose land administration system reflective of local nuances and the socio-cultural peculiarities of the Nigerian state to forestall the continued proscription of those distinct and complex traditional tenure regimes and institutions that play important functionalities in the lives of women and other members of various local communities.

CONCLUSION

Effective socio-economic improvement through efficient land administration and tenure reformation is considered key to growth, development and sustainability in contemporary Nigerian state. However, the challenges of dealing with the plurality of land tenure regimes make addressing questions of underdevelopment, gendered tenure insecurity and land reform difficult. Examination of available literatures has shown how entrenched the problems of land administration and tenure system is, and its negative impacts on development, its sustainability and the source of livelihood of communities, particularly women and other vulnerable groups. It identified the root causes of the problems and called for adoption of workable approaches to salvage the situation. This research however fills the gap of formulating and providing the practical guide that would ensure the eradication of these challenges at country and zonal levels, as well as provide succour, tenure security and improved livelihood to women and other vulnerable groups in Nigeria.

1.4: Main Argument

That women and many other vulnerable groups face all manner of discrimination and subjugations in Nigeria, particularly discrimination against their land rights and other natural resources, is no longer news. The major challenge also has never been the lack of universal consensus on the existence of such inequalities, rather on how to create systematic, responsible, purposeful and sustainable people-oriented land administration models capable of guaranteeing tenure security and equitable governance of societal wealth and other natural resources. Proclivity to legal and judicial approaches to

customary legal reformation has failed to yield expected results while the adoption of land titling and other conventional approaches as the panacea to the challenges of inequitable land administration and tenure security have failed to achieve the expected results. This has also been acknowledged globally as available evidence points out that less than a quarter of countries in the world has complete and effective land administration system. This means that around 4 billion of the global 6 billion land tenure systems are outside the governments' formal tenure arrangements.⁸² In the case of Nigeria, less than 3 percent of land in Nigeria are registered and secure within the government's land administration arrangement.⁸³ This is a clear indictment on the effectiveness of the prevailing approaches, policy choices, legal and institutional arrangements for land administration in the country. It also points to the limitations of conventional land administration system, and its inability to guarantee in isolation secure and equitable tenure for all Nigerians in general and for women in particular.⁸⁴ This unfortunate development significantly affects the progress and development of the Nigerian state, thus, the continued clamour for the adoption of more innovative, responsible and decentralised land reform approaches in Nigeria.

The demand for urgent land reform in Nigeria has in recent time gained much traction across the length and breadth of the country, transcending ethno-tribal, linguistic, cultural and religious divides. This exponential increase in demand for reforms is informed particularly by recent socio-political and security developments which threatens the corporate existence of the Nigerian state. The importance and urgency of these reform demands, and the need to provide systematic and realistic guide to the reform debate constitute sufficient justification for this research work. Of a particular concern is the recent clashes between herdsmen and farmers over grazing rights, ownership and right of access to land, water and other natural resources. This has exacerbated the problems of tenure insecurity and contestations over land rights in Nigeria. Following the harsh weather patterns which led to acute water scarcity, drought, desertification, dry grasses and leaching, together with the increasing effects of

⁸² Walter T. et al, 'Towards Responsible Land Administration', in *Advances in Responsible Land Administration*. Jaap Zevenbergen, Walter T. de Vries and Rohan M. Bennett (ed) (Taylor and Francis, 2016). P. 3

⁸³ Hosaena Ghebru and Fikirte Girmachew, 'Scrutinizing status quo: Rural transformation and land tenure security in Nigeria'. (2017) NSSP Working Paper 43. Washington, D.C.: International Food Policy Research Institute (IFPRI). P. 5.
<<http://ebrary.ifpri.org/cdm/ref/collection/p15738coll2/id/131363>>. Accessed 30/07/18

⁸⁴ Ibid.

tsetse-fly infestations within the northern part of Nigeria, the nomadic pastoral herders are driven from their traditional Northern localities to the areas occupied by farming communities within the Southern axis in search of water and grazing pastures for their livestock. Their cattle trample on and eat up crops and grasses, contaminate sources of water and destroy farmers sources of livelihood along the way, resulting in confrontations, bloody clashes, attacks and reprisal attacks which invariably leads to wanton destruction of lives and properties.⁸⁵ This has claimed more than 2000 lives, displaced over 40,000 Nigerians, while various farming communities has been decimated. Unfortunately, in each of these incessant clashes, women, children and the feeble constitute the main casualties.⁸⁶

These unfortunate developments have significant negative impacts on the beleaguered Nigerian agricultural productivity and food security as farmers are afraid of going to their farms for fear of losing their lives to the marauding-gun-wielding-herdsmen. The Nigerian Central Government's failure to accord this matter the deserved urgent attention has been roundly condemned,⁸⁷ and available options before the affected regions, States and Local Governments in this regard are limited owing to the land nationalization policy of the central government. There is significant decrease in the country's GDP from agriculture,⁸⁸ and sharp decrease in oil price at the global market means a significant reduction in her foreign earning which constitutes the country's major source of income. Insecurity is generally on the increase, even as Nigeria surpasses India as the extreme poverty capital of the world.⁸⁹ Economists have continuously emphasized the centrality of effective land management and tenure security to investments' stimulation and increased productivity. Provision of security and significant improvement in the agricultural sector offer the most realistic opportunity for the Nigerian nation to be salvaged from its perfidious drift towards anarchy and failed statehood. However, the herders/farmers bloody clashes, together

⁸⁵ Morgen S. B, 'The Pastoral Conflict Takes a deadlier turn'. (2018) P. 8.
<http://sbmintel.com/wp-content/uploads/2018/01/201801_PastoralConflict.pdf>.
Accessed 09/08/2018

⁸⁶ Mira Obersteiner: Fulani Herdsmen Crisis: Corruption and Ignorance Affecting Nigeria's Society. The Medium, March 16, 2018. <<https://medium.com/@miraobersteiner/fulani-herdsmen-crisis-corruption-and-ignorance-affecting-nigerias-society-23bc65d2b463>>.
Accessed 09/08/2018.

⁸⁷ Ibid.

⁸⁸ Trading Economics: Nigerian GDP from Agriculture 2010- 2018.
<<https://tradingeconomics.com/nigeria/gdp-from-agriculture>>. Accessed 12/08/2018

⁸⁹ World Poverty Clock, August 2018. Reports on Nigeria. <<http://worldpoverty.io/>>.
Accessed 25/08/18

with the prevailing tenure insecurity and inequitable land administration system constitute obvious constraint to the country's hope of achieving peace, increased productivity, sustainable development and improved wellbeing for the citizenry.

The 2030 global Agenda for Sustainable Development has also pointed out the centrality of land and tenure security to the effective tackling of the challenges of poverty and inequalities within the rural and urban areas of the developing countries. It identified land as major source of food, shelter, a strong ground for socio-cultural, economic and religious practices and advancement. Thus, tenure security is primarily projected as an inevitable tool for the achievement of the Sustainable Development Goals (SDG); for poverty eradication and achievement of gender equality, food security and sustainable ecosystem. Tenure security also has direct correlation to societal peace, level of social cohesion, sustainable development and survival of the rural populace; particularly women, children and other vulnerable groups.⁹⁰ Following the current unprecedented increase in poverty⁹¹ and insecurity, particularly those arising from the activities of the Boko Haram sect, as well as bloody clashes and reprisal attacks over land contestations in Nigeria,⁹² it has become imperative for the Nigerian government and other stakeholders in land matters in Nigeria to adopt alternative and more realistic land administration approaches reflective of prevailing needs and social dynamics to complement and sustain the efforts and gains of the conventional model of land administration and intervention efforts in Nigeria. Such a synergy presents hopes for a more peaceful, secure, equitable, progressive and developed Nigerian state.

1.5: RESEARCH OBJECTIVES

The essence of this research is not to lampoon policy makers on their atavistic dispositions towards discriminatory tenurial practices, and inability to devise effective

⁹⁰ GLTN/UN-HABITAT; Measuring Land Tenure Security with SDG Indicator 1.4.2. <<https://gltn.net/home/2017/05/25/measuring-land-tenure-security-with-sdg-indicator-1-4-2/>>. Accessed 04/06/2018. Also see Enemark, S., McLaren, R., & Lemmen, C., Fit-For-Purpose Land Administration: Guiding Principles for Country Implementation. (2016) Nairobi: UN-Habitat, Global Land Tool Network. P. 14. <<https://unhabitat.org/books/fit-for-purpose-land-administration-guiding-principles-for-country-implementation/>>. Accessed 06/04/2018. See also World Bank publication; "Atlas of Sustainable Development Goals 2017: From World Development Indicators". Indicator 5a. p.109. <<https://openknowledge.worldbank.org/handle/10986/26306>>. Accessed 01/08/2018.

⁹¹ World Poverty Clock, August 2018. Reports on Nigeria

⁹² Mira Obersteiner: Fulani Herdsmen Crisis: Corruption and Ignorance Affecting Nigeria's Society.

and acceptable equitable approaches to land administration and management in Nigeria, much of many other works have already done that. Neither is the intention just to establish and emphasize the existence of, and the negative impacts of social-cultural and religious tenurial injustices and their occasioned inequalities which have hampered women's chances of survival within Nigerian society. The aim of this work is to develop and provide policy makers with an innovative and responsible land administration framework; a novel and more realistic perspective that would challenge the ineffective conventional approaches to land administration in Nigeria, with the hope of engendering incremental socio-economic emancipation for the poor and rural women through efficient management of the available leverages within the purview of the customary law system even as the demand for an elusive but achievable, just, equitable and separate property rights for Nigerian women continues unabated. The logic is to build on available strengths, securities and opportunities inherent in the "imperfect" customary tenure system, using that as a springboard towards incremental enthronement of more secure, practicable and sustainable land administration system reflective of local nuances and socio-cultural peculiarities of the Nigerian state in general and Eastern Nigeria in particular.

Using the 8R Matrix approach to Responsible Land Administration, the paper tried to compare and contrast the experiences and approaches adopted by Ghana and Nigeria in relation to land administration, customary tenure reformation and the achievement of tenure security for all in both states. This comparative approach yielded insights reflective of the strengths, weaknesses, challenges and opportunities for the development of a novel and more realistic land administration system capable of providing equitable and secure tenure for all Nigerians, particularly women and other vulnerable groups within the Eastern part of Nigeria. It hopes to enlist the principles and guidance from acclaimed indicative land tools such as Fit-for Purpose concept, Continuum of Land Rights and the Social Tenure domain Model (STDM) in the development of sustainable, flexible, affordable, timely, gender and culture sensitive and scalable land administration system capable of providing security of tenure for all.

1.6: RESEARCH QUESTIONS

The major research question for this thesis centres on; To what extent could the adoption of decentralised and innovative land administration model, as well as the reformation and statutory recognition of customary tenure rights help promote sustainable rural development and security of tenure for all Nigerians, particularly for

women and other vulnerable groups in Eastern Nigeria.? However, each of the chapters of the thesis further raises a single sub-research question to guide the flow of the narrative. These questions are as follows:

Chapter 2: How have experiences of colonialism affected attitudes and approaches to land in Nigeria?

Chapter 3: What are the different types of tenure and legal systems operating in Nigeria and how do they affect women's land rights?

Chapter 4: How has the Nigerian government responded to calls for land reform, and what has been the impact of various legislation?. In addition, to what extent has judicial activism helped in resolving conflicts and constraints arising from the limitations of Nigeria's legislative approach to land, particularly, in response to challenges facing women's land rights?

Chapter 5: What forms of land administrative and legislative approaches are available for Nigeria to deal with the challenges of inequitable and customary land tenure, with reference to other African examples?.

Chapter 6: what is the historical synopsis of Nigerian land administration and tenure reforms in the light of equitable land administration and security of tenure provision?.

Chapter 7: what is the historical synopsis of Ghanaian land administration and tenure reformation experimentations, and to what extent does these experiences contribute to perspectives that are useful for Nigeria?

Chapter 8: Using the 8R Matrix, what are the key lessons to be learnt from the case of Ghana for Nigeria?

Chapter 9: What new model of land administration could be useful for the transformation of customary land tenure, and provision of tenure security for women in Eastern Nigeria?

Chapter 10: What conclusions can be drawn from this thesis about the future direction for land management in Nigeria and other contexts?

1.7: METHODOLOGY

Land reform activities entail a systematic shift on institutional and socio-policy approaches to the processes of policy formulation, adoption and execution in relation to land which is a scarce resource that is prone to divergent understandings, interpretations, valuations and contestations. Contestations over the acquisition,

disposition and authoritative allocation of this scarce resource (land) with its economic, religious and other social symbolic attributes squarely place it within the fold of politics and its disciplinary perspective. Sets of rules and regulations are also required to be established to guide these processes, even as the rules are to be administered by the authorized entities thereby taking land matters beyond the confines of politics to other disciplines. Thus, it will be erroneous to restrict perspectives on land matters to a traditional single disciplinary perspective as the definitive attributes of land transcends divergent traditional disciplinary purviews among which are law, politics, geodesy, land survey, anthropology, planning, public administration, sociology, economics, and development studies. Above diversities made it extremely difficult for one to holistically examine land administration concepts from a single disciplinary perspective owing to its broad connectivity and divergent connotations.

In view of the above, this thesis has taken an interdisciplinary approach to the key themes of equitable land administration in Nigeria, with particular reflection on tenure insecurity and gender justice in the context of Eastern Nigeria. Interdisciplinarity in research connotes the integration of divergent tools, techniques, perspectives, concepts and theories from two or more disciplinary frameworks to either gain a broad and well-developed understanding of the subject matter or provide adequate solution to “wicked problems” that defy traditional single disciplinary prognostication.⁹³ “As hybrid of disciplines are hardly uniformly handled”, the core perspectives for evaluation of the subject matter is rooted in policy and law. My academic background in political science, law and my past working experiences in the Ministry of Rural development, Cooperative and Poverty Alleviation in Nigeria all correlatively informed the bias and fuelled the desire to push for a paradigm shift from the status quo.

As a legally and policy-based desktop study on equitable land rights and customary tenure practices, this research focuses primarily on the legislative agenda of the Nigerian government and the response in-terms of judicial activism to the effects and functionalities of the customary tenure system, gendered tenure security and the failure of conventional approaches to land reform in Nigeria. As a result, the use of case laws and exploration of legislative experiences from historical perspective both in Nigeria and other African countries was found to be pertinent and of relevance. This allowed for more reflection on the development and success of the legislative and judicial approaches, and

⁹³ Weingart, P and Stehr, N. *Practicing interdisciplinarity*. (university of Toronto Press, 2000) p. xi- xvi.

the addition of critical literature that commented on the challenges particularly facing Eastern Nigeria in relation to customary land tenure practices, perceived inequitable land administration system and tenure insecurity.

Three fundamental considerations informed the choice of desktop research approach. These factors are the social exigencies prevalent at the period of the commencement of the research, ethical and financial considerations. At the point of the commencement of this research exercise in 2014, there was little or no incentives for primary data generation in the area of customary land administration and gendered tenure systems in Nigeria as activities, debates and contestations bothering on the subject matters have lingered unsuccessfully for decades and finally waxed cold in the mind of many stakeholders, while numerous efforts aimed at resolving the impasse through judicial interventions has always been thwarted by the supreme court's atavistic disposition towards male chauvinistic tenurial traditions. This could be inferred from the case of *Mojekwu v. Mojekwu*⁹⁴ and other similar case studies. It took the Nigerian Supreme Court's sudden change of attitude and clampdown on discriminatory tenurial systems later in 2014 to reinvent the discourse on gendered land rights and tenure security in Nigeria.

There is also the concern of the strict ethical considerations involved in conducting primary investigations on case studies involving vulnerable groups; in this case, women, illegitimate children, widows, customary institutions with statutorily proscribed tenure related functionalities and adherents of the various customary tenure practices that are proscribed by the extant laws of the land and judicial pronouncements. These customary institutions and their practices have however remained indispensable as they continued to form part of/and regulate the day to day activities of many rural dwellers in many communities in Nigeria. Activities of these customary institutions and the operations of many of these customary tenure practices are distinctive and often heavily shrouded in cult-like secrecy following the statutory and judicial proscriptions. Thus, it would require the adoption of broadly coordinated interdisciplinary research approaches with extended timeframe and much funding at a level far beyond the scope and capacity of this research to circumvent or break the traditional web of secrecy and fears, cover a considerable number of communities and customary institutions, gain the confidence of the administrators of the local institutions, the vulnerable groups and other customary tenure

⁹⁴ (1997) 7 N.W.L.R. (Pt. 512)

practitioners to enable unhindered external scrutiny thereby allowing researchers to generate reliable data reflective of practical realities.

The literature reviewed as part of this thesis reflected upon five core themes, which gives a flavour of the distinctiveness of the debates on the trajectories of land administration and tenure reforms in the Nigerian context. These included: land tenure systems, Nigerian land law, customary practices and tenure regimes, gendered land rights, and theories relating to land administration, tenure reforms and gender justice. By concentrating on the socio-legal, cultural, historical and ethno-linguistic background to land tenure system and its management in Nigeria, focus was explicitly given to dimensions of the discourse that are central to exploring issues facing customary practice, which are often removed from formalized legal systems in relation to land. These themes provide the foundations of the discourse touched upon in this thesis, which also add to the distinctiveness of the proposed decentralized and hybrid land administration model. This model was developed with reference to emerging tools and concepts, which include Responsible Land Administration, the Continuum of Land Rights, Social Tenure Domain Model (STDM) and Fit-for-Purpose land administration. Together these tools helped in the formulation and consideration of gender perspective to tenure debates, as well as their interrelationship with land and rural development.

Further to this, comparative legal analysis was used methodically to focus on the example of Ghana, and the lessons of its land reform for Nigeria. The “8R Matrix” which references eight key indicators of Responsible Land Management helped to frame this comparative approach to the cases of Ghana and Nigeria. The eight main aspects are: Respectable, Robust, Resilient, Responsive, Recognizable, Retraceable, Reflexive, and Reliable. Each provides an indicator of how well a government, municipality, local government or society may undertake the management and administration of land within their domain. For example, having a responsible land administration system may include the municipality having clear guidelines on how particular types of land issues are to be dealt with, and an indication of how officials may conduct their inquiries. This logic can be applied to all eight indicators and formed the basis of the key takeaways that fed into the development of the new proposed land administration model for Nigeria.

Thus, overall these methods were robust and helped to place the thesis within clear boundaries both from an academic and a practice-orientated standpoint.

1.8: SCOPE AND LIMITS TO THE RESEARCH

It is practically impossible for a study of this nature to cover all the literatures that exist on issues bothering on land administration, land rights, tenure security and land reform across African continent. This is owing to the vastness of the available resources, variations on the forms and nature of land challenges faced by these countries and the preferred approaches adopted by the states' in their attempt to tackle their peculiar challenges. Thus, there is no universal template across African continent for solving land related challenges. The scope of the sources relied on in this context is determined by a number of factors, chief among are the peculiarity of land challenges faced by the Nigerian state, the nature of reform policies and measures adopted in attempt to deal with the perceived problems, the choice of a comparator state that shares common attributes and faces land tenure challenges similar to Nigerian peculiar tenure constraints and finally the expected approach for the resolution of the impasse. Above factors helped in establishing clear limits and boundaries on my of literatures. Thus, attention is restricted to literatures that examined the Nigerian and Ghanaian land tenure and administration system, customary law provisions in relation to land ownership and access, as well as preferred policy and reform responses to tenure insecurity and gender justice.

More so, Nigerian is a vast state with multiple ethnic, religious and tribal groups that have distinct cultural identities, backgrounds and customary provisions for land and tenure administration. The difficulty in making a generalised assumption on matters of tenure and land administration in Nigeria makes selection of specific tribe(s) for investigation inevitable. Thus, the research looks at the concept of tenure security, land administration system and reforms in Nigeria from the lens of the three hegemonic ethnic groups (the Igbo, Hausa/Fulani and the Yoruba), with particular interest on women's tenure security among the Igbo people of Eastern Nigeria. This helped in distinguishing the nature of literatures to be consulted and the limit of the investigation.

Limitations may arise as a result of the fluidity of customary law variables, poor documentation of incidences and in some cases, poor preservation of data in Nigeria, as well as limited access to some recent policy and legal materials bothering on tenure security and land administration in Nigeria.

CHAPTER 2: HISTORICAL PERSPECTIVES ON LAND TENURE

2.1: INTRODUCTION

Clear attempt is made within this chapter to establish and clarify the concept of land tenure system, the general conception and legal definition of land and its constituents. Thus, offering a clear distinction between what is generally perceived as land and what actually connotes land and tenure system within the legal parlance. This helped to establish the foundation upon which the subject matter will be conceived, evaluated and discussed throughout the thesis.

In addition, the chapter offered an in-depth exploration of the historical antecedents to land acquisition processes, the narratives and contestations over forms of land ownership observed by pre-colonial communities, their distinctive access and use patterns, the meaning and value accorded to land from the traditional perspective, as well as the administrative and managerial architecture of the Nigerian land administration system from the pre-colonial era through the period of colonial experimentations to the contemporary era of complex land tenure and administrative system. Such a historical perspective shades light on the foundation and reasons behind the idea of inalienability of land within various traditional African communities, the transformations occasioned by colonial experimentations and the accusation that the colonial masters were away of all these peculiar attributes of the pre-colonial states but deliberately chose to ignore their existence in attempt to perfect their land expropriation agenda. It also explained how these relics of colonial experimentations has continued to shape the nature, value, understanding and perception of land and its administration within the contemporary African societies.

2.2: LAND AND TENURE SYSTEM DEFINED

Land tenure system can be seen as a body of rules governing access to land, and relationships that exist between landowners and the community within which land is located on one hand, and other parties having superior title to the land. One's interests in land is conditioned by the framework of tenure system in operation within the community, which in turn is shaped by the socio-cultural, political, religious and economic peculiarities of the concerned community.⁹⁵ The general understanding and perception of what constitutes land goes beyond the earth surface and the subsoil to include other natural and artificial attachments to the soil which include houses, trees,

⁹⁵ Kunle Aina et al, Introduction/Historical Evolution of Land Law in Nigeria. P. 3

rocks, rivers, dams, streams and every other man-made fixture to the soil. However, within the ambit of the law, the understanding of what constitutes land transcends the above to include abstract entities, rights and interests such as incorporeal hereditaments, rights of way, easement and profits.⁹⁶ For the purpose of this thesis, land will be defined as;

The earth surface and.... everything attached to the earth otherwise known as fixtures and all chattels real. It also includes incorporeal rights like a right of way and other easements as well as profits enjoyed by one person over the ground and buildings belonging to another.⁹⁷

Laws are particularly formulated for the regulation of the relationships that exists between persons in one hand, and between persons and things, tangible and intangible. It provides secure grounds upon which people can acquire, enjoy and dispose of their acquisitions, as well as describe and regulate people's rights and interests in things.⁹⁸ Land law is designed to perform the aforementioned functions in relation to land, and are highly essential for effective administration and regulation of the use, ownership, transfer and maintenance of land in every society. It remains an indispensable element in the drive towards secure and equitable land right for all.

However, any attempt at establishing robust, functional and responsible land policies in Nigeria and/or understand the underlying factors that informed the adoption of various forms of land laws, policies and reforms across African states must be preceded by an in-depth exploration of the historical antecedents to land acquisition processes, its ownership, uses, meaning and value, as well as the administrative and management mechanisms that characterized the nations' land issues right from the pre-colonial era through the period of colonial experimentations to the contemporary era of complex land regime. This is inevitable to the understanding of the prevailing land tenure structures, its evolutionary antecedents and the undeniable effects it has brought to bear on land matters in relation to contemporary African societies as a whole and Nigeria in particular.

Colonial legacies are of great significance in relation to the nature, meaning and value of land, as well as its governance and administration in contemporary Nigerian society. This is owing to the fact that the deep and complex attributes that colonial experience

⁹⁶ Ibid. p. 18

⁹⁷ See sec. 2, Cap. 100. Laws of Western Nigeria 1959.

⁹⁸ Kunle Aina et al, Introduction/Historical Evolution of Land Law in Nigeria. 17

brought to bear on land matters within various indigenous communities in Nigeria has formed an indispensable part of our modern-day land regime. Colonialism brought profound changes and redefinition of the core values of various traditional societies as the colonial legal system significantly influenced and transformed the scope and nature of the legal systems of their former colonies, particularly in relation to land administration. The effects are indelible as once small-scale pre-capitalist communities were transformed to embrace capitalist's production relations which in most cases were skewed to the advantage of the colonial powers. this had major disruptive effects on the pre-existing social organisations.⁹⁹ The actual position and composition of pre-colonial Nigerian communities and their definitive configurations were aptly captured by the Supreme Court in the celebrated case of the *Attorney General of the Federation v. The Attorney General of Abia State*¹⁰⁰ in which the apex court expressly stressed that;

Until the advent of the British colonial rule in what is now known as the Federal Republic of Nigeria, there existed at various times various sovereign states known as emirates, kingdoms and empires made up of ethnic groups in Nigeria. Each was independent of the other with its mode of government indigenous to it.¹⁰¹

Land ownership and administration within this period of ethnic interface was predominantly communal in nature with the traditional heads holding all the lands in aggregate trust on behalf of the entire members of the community. The configurations and modus operandi of all the pre-colonial traditional institutions that guaranteed smooth running and peaceful co-existence of the hitherto ethno-communal sovereign states were either significantly altered or completely shattered as a result of the British conquest of Nigeria which started with the signing of the Treaty of Cession by the then King Dosumu of Lagos in 1861.¹⁰² This heralded the tremendous transformation and redefinition of major attributes of most indigenous traditional practices and customary institutions like marriage, family life, relationship and interdependence, land ownership and its administration, as well as wealth and customs within the traditional indigenous

⁹⁹Walker Cherryl, 'land reform in Southern and Eastern Africa; Key Issues for Strengthening Women's Access to and Rights in Land' (2002) FAO Report. p. 8. <<http://jurisafrika.org/docs/statutes/Walker+on+Women%27s+access+to+Land.pdf>>. Accessed on 1/06/2016.

¹⁰⁰ (2002) 6 NWLR (pt. 640-941)

¹⁰¹ Ibid. See also Smith, I. O, *practical approach to Law of Real Property in Nigeria* (2nd. ed. Ecowatch Publication Nig. Ltd, 2007). p. 25

¹⁰² Kunle Aina et al, Introduction/Historical Evolution of Land Law in Nigeria. P. 6- 7

communal sovereign states. In some situations where the outer structures of these traditional institutions and their definitive attributes appear to show remarkable signs of resilience and continuity with the pre-colonial order, the peculiar elements were either grossly reshaped or even completely exterminated.¹⁰³

It is worthy of note that the concept of Traditional African land rights and tenure relations is however traceable to the pristine times through a web of complex socio-political, economic and cultural factors which eventually culminated in colonial experimentations, western hegemony, decolonization, neo-colonization up to the present era of globalization. Thus, important land issues like territorial ownership and boundary adjustments are now being determined within the purview of the international arena. A recent case in history within the sub-Sahara African territory is the International Court of Justice (ICJ) judgement on land and marine boundaries between Nigeria and Cameroon.¹⁰⁴

Various relics of colonial experiences have continued to shape the debate and understanding of land, tenure reforms and gender related matters. Prominent among these are the fundamental reshaping of the sources of production within the traditional communities; the commoditization of land and the emergence of private property ownership system, the entronement of predominantly rural-urban migration in some regions, as well as the emergence of dual legal and administrative systems across the society¹⁰⁵. In the light of the above significant changes, it becomes imperative to examine the effects of these undeniable factors and how they have impacted present debates on equitable land right and women emancipation within Nigeria and various other African states.

2.3: EVALUATING CHANGES TO THE PROCESS OF LAND ACQUISITION, OWNERSHIP AND MANAGEMENT

Land within the bounds of the pre-colonial African traditions and customary law understanding was originally seen and defined as particularly the soil and the soil only. Buildings constructed on a person's land, even when it was erected by a trespasser, do not constitute a part of the land, rather belongs to the person that erected it. Same goes

¹⁰³ Walker Cheryl, 'land reform in southern and eastern Africa', p. 8

¹⁰⁴ Cameroon v. Nigeria – International Court of Justice.

<www.icj.org/docket/index.php?sum=496&code=cn&p1=3&p2>. Accessed 16/01/17

¹⁰⁵ Ibid.

for trees and crops planted on one's land by another person.¹⁰⁶ In other words, the English Common law maxim of *quicquid plantatur solo, solo cedit*¹⁰⁷ is purely alien to the traditional Nigerian customary law concept as there is no customary law rule in support of the maxim. The only known rule being in *Okoiko v. Esedalue*¹⁰⁸ where the Supreme Court ruled that a pledge of land under customary law could not reap the benefits of improvements made on the land by him after the land has been redeemed by the pledgor. However, it should be noted that this proposition was reached in relation to customary pledge only.

The applicability of the maxim of *quicquid plantatur solo, solo cedit* in relation to customary tenancy in Nigeria is still shrouded in uncertainty. This is because, customary tenancies are often created in favour of strangers for various purposes which mostly involves improvements on the land. The horizon of right of usage under customary tenancy is grossly unfettered unless where expressly stated by the grantor or where such an improvement is adjudged to be injurious to the grantor's right of reversion or interest. In cases of periodic customary tenancy where the grantee is expected to plant food crop or allowed to plant economic trees, he is allowed to sell his crops on vacating the land¹⁰⁹. However, in *Sateng v Darkwa*,¹¹⁰ and *Moore v Jones*,¹¹¹ the courts ruled against the application of the principles of this common law maxim. This is a pointer to the fluidity of the understanding of both the meaning and patterns of ownership of land under the customary law provisions.

On the contrary, land ownership under the common law parlance goes far deeper and appears more comprehensive as it encompasses both the soil, everything attached to the soil and the incorporeal rights. According to Smith, land within common law understanding is taken to encompass both the earth surface, subjacent things of a physical nature, every other thing attached to the earth surface and the incorporeal rights.¹¹² The Nigerian Property and Conveyancing Law contain the same definitive

¹⁰⁶ R. W. James, *Modern Land Law of Nigeria* (university of Ife Press, Ile Ife 1973) p. 14.

¹⁰⁷ This maxim provides that whatsoever that is affixed to the soil, in contemplation of the law, is automatically part of the land. Therefore, if a man carries out developmental projects or plants trees on the land of another, the owner of the land, by law, becomes the owner of the buildings and plants

¹⁰⁸ (1974) 3 SC 15

¹⁰⁹ Smith, I. O, *practical approach to law of Real Property*, p. 17

¹¹⁰ (1940) 6 WACA 52

¹¹¹ (1926) 7 NLR 84

¹¹² Kunle Aina et al, *Introduction/Historical Evolution of Land Law in Nigeria*. P. 18

elements as that of common Law as it sees land to include "the earth surface and everything attached to the earth otherwise known as fixtures, and all chattels real. It also includes incorporeal rights like right of way, and other easements as well as profits enjoyed by one person over the ground and buildings belonging to another".¹¹³ The applicability of the doctrine of *quicquid plantatur solo, solo cedit* is obviously not in doubt under the common law provision and has come to be adopted as an established principle of the Nigerian legal system. This rule has been received along with other common law provisions and has since been relied upon by various courts of competent jurisdictions in resolving land disputes in Nigeria.¹¹⁴ However, its adoption into the mainstream of Nigerian legal system is never suggestive of unrestricted applicability in all legal situations and circumstances.

A clear understanding of what constitutes land within Nigerian state is desirable at this point in order for us to have full grasp of the subject matter under discourse. It could be discerned from above definitions that land within both the common law and the Nigerian property and Conveyancing law parlances are compartmentalized within four unique definitive elements. In the first instance, land is seen as the earth surface. This comprises all the top surfaces of the earth not covered by water, their sizes, shapes or forms notwithstanding. Secondly, subjacent things of physical nature are also regarded as elements of the land, and these are mainly mineral deposits that are beneath the earth surfaces. It should be noted however that the ownership and management of these mineral deposits in Nigeria are exclusively vested in the hand of the Federal Government in accordance with the provisions of the law.¹¹⁵ Thirdly, all that is attached to the land, including trees, houses and any other form of attachments are regarded as part of the land. Thus, whatsoever that is affixed to the soil, in contemplation of Nigerian law, is regarded as part of the soil. This informs the adoption of the maxim of "*quicquid plantatur solo, solo cedit*" within the Nigerian judicial parlance.¹¹⁶

¹¹³see Cap 100, LFN 1958, s.2

¹¹⁴This could be seen from the positions of the courts in *Francis v. Ibitoye* (1930) 13 NLR 11; *Ude v. Nwara* (1993) 2 NWLR (pt.278) 639 among others

¹¹⁵The Nigerian Interpretation Act contains a restrictive clause which excludes mineral deposits as part of the land, and also puts the right of ownership and management of all mineral deposits in or over the land exclusively on the Federal Government. See 1(1) minerals and mining Act Cap 226 LFN 1990/ Cap M12 LFN 2004. See also S.18 (1) Cap. 14, Laws of Lagos State of Nigeria, 2003., Cap 192 LFN 1990/ Cap 123 LFN 2004

¹¹⁶Fatayi-Williams JSC delivering the leading judgement in *N.E.P.A v. Amusa* (1976) 12 SC 99, 114-115

Land ownership within the traditional rural setting was mostly communal in nature and regulated by customary or indigenous legal principles. Communal lands are generally un-allotted lands that are owned in common aggregate by all the members of a community, kindred, village or extended family.¹¹⁷ The chief, traditional or family head acts as a trustee, holding the land in trust for the common use of the members of the community or family.¹¹⁸

It was a commonly held principle in various local communities that land belongs to communities, villages and families, and never primarily to individuals.¹¹⁹ It is also believed among various communities, including the Igbo communities of South Eastern Nigeria, that “land belongs to a vast family of which many are dead, few are living and countless members are still unborn”.¹²⁰ The above position strengthens the notion that land belongs to both the living and the dead, and thus, would be grossly inappropriate to vest the absolute control and right of administration of a thing with such a complex web of ownership rights on a single individual whom pressure and unsavoury circumstances might compel to dispose of parts of it to ease personal challenges. Individuals’ right to land during this period was limited to the use and enjoyment of the land. Thus, no individual has the right to alienate any part of the land thereof without the requisite consent of the village or family representatives. This position was captured by Oluyede in *Eze v. Igiliege*¹²¹ in which the erudite scholar stressed that “group ownership in African context is an unrestricted right of the individual in the group to run stock on what is held to be the common asset of land; and the tacit understanding that absolute ownership is vested in the community as a whole”.¹²²

Meanwhile, individual land ownership has in recent time led to land commoditization and speculations in various contemporary societies. This was not the situation in pre-

¹¹⁷ Epiphany Azinge et al, *Restatement of Customary Law in Nigeria* (Nigerian Institute of Advanced Legal Studies, Abuja. 2013) p. 207

¹¹⁸ Sadiq Emmanuel Rasaq, ‘The Land Use Act of 1978: Problems and Prospects’, (2011).< <https://docplayer.net/54260775-The-land-use-act-of-1978-appraisal-problems-and-prospects.html>>. pp. 20. Accessed 20/08/18

¹¹⁹ Osita Ifediora, ‘An Analysis of Igbo Traditional Land Tenure System in Amawbia (Amobia), Awka South Local Government Area of Anambra State’. www.ijesi.org Volume 3 Issue 1, January 2014. P. (24- 38) at 27

¹²⁰ Ross Andrew Clark, “Securing communal Land Rights to achieve Sustainable Development in Sub-Sahara Africa: Critical and Policy Implications’. 5/2. Law, Environment and Development Journal (2009) p. 132, <http://www.lead-journal.org/content/09130.pdf>.

¹²¹ *Eze v. Igiliege & Ors.*, 14 WCA 61

¹²² Ibid

colonial African societies as this development is seen as part of the relics of colonialism which is also impacting negatively on land rights of women and other vulnerable groups who often are not well positioned to make such personal acquisitions.¹²³ Justice Osborn, in *Lewis v. Bankole*¹²⁴ upheld the above position by stating that "the idea of alienation of land was undoubtedly foreign to native ideas in the olden days but has crept in as the result of contact with European notions...".¹²⁵ Lord Viscount Haldane also gave legal backing to the above notion by asserting that "It is important to bear in mind in order to understand native law that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual".¹²⁶

It must be stated however that though communal lands are mostly entrusted in the hands of the chief, village or family heads to manage and control as "trustees", the capacity of their jurisdiction over the land is purely at variance with the actual meaning of trusteeship as known within the English legal system¹²⁷. This is owing to the fact that the main title to the land was never vested in the head, rather in the community, village or family. The chief or family heads' powers were limited to the administration and management of the land in a representative capacity for the benefit of all, this equal access concept means, to a larger extent, that women and other vulnerable groups has right of access equal to that of other members of the community.

However, the assertion that individual or private land ownership is unknown within the framework of the African customary law jurisprudence has been challenged and termed to be untrue and grossly misleading. Individual land ownership apologists have stressed that both the communal, family and private land ownership patterns have been common trends in African customs and traditions from time immemorial.¹²⁸ There also exists ample historical and anthropological evidence which suggests that pre-colonial Africans practiced a wide range of property ownership system.¹²⁹ Various historical accounts

¹²³ Osita Ifediora, *An Analysis of Igbo Traditional Land Tenure System in Amawbia (Amobia)*, p. 27

¹²⁴ (1909) 1 NLR 82, p. 83

¹²⁵ (1921) AC 399, 404

¹²⁶ *Amodu Tijani v. Secretary of southern Nigeria* (1921) AC 399, 404

¹²⁷ Sadiq Emmanuel Rasaki, 'The Land Use Act of 1978: Problems and Prospects. pp. 20

¹²⁸ Ibid.

¹²⁹ Rachael S. Knight, 'Statutory Recognition of Customary Land Rights in Africa; An Investigation into Best Practices for Law Making and Implementation'. (2010) <www.fao.org/docrep/013/i1945e/i1945e01.pdf>. Accessed 6th May 2016. P. 21

clearly points to the fact that the colonial masters were aware of the existence of wide range of property ownership patterns, including private or individual land ownership pattern in pre-colonial Africa, but deliberately ignored the obvious. This position could be deciphered from the documentations of some early colonial administrators. For instance, Fredrick Lord Lugard, while describing pre-colonial African property ownership patterns stated thus;

In the earliest stage the land and its produce are shared by the community as a whole; later the produce is the property of the family or individuals by whose toil it is won, and the control of the land is vested in the head of the family. When the tribal stage is reached, the control passes to the chief, who allots unoccupied lands at will, but is not justified in dispossessing any family or person who is using the land. Later still, especially when the pressure of population has given to the land an exchange value, the conception of proprietary rights in it emerges, and sale, mortgage and lease of the land, apart from its user, is recognized ... These processes of natural evolution, leading up to individual ownership, may, I believe, be traced in every civilization known to history.¹³⁰

Above excerpt indicates that the colonial masters were aware of the existence of varieties of ownership systems existing among pre-colonial Africans but chose to dwell only on those aspects of the African customs that supported their land acquisition, exploration and expropriation agenda. This was as a result of the colonial masters' conviction that "the expropriation of communal lands was far more easily politically and legally accomplished and justified than the expropriation of individuals rights".¹³¹ These expropriations by the colonial powers impacted negatively on all, particularly women and other vulnerable groups, who depended on access to these lands for their livelihood.

It must be noted however that both the land handed on to son by his father, those personally acquired through the process of clearing of virgin forests, land given as repayment for loans or those privately purchased by members of the community remain their personal property with exclusive right to manage and administer as wills. In various communities in Eastern Nigeria, there also exists plethora of privately-owned

¹³⁰Lugard, F. D, *The Dual Mandate in British Tropical Africa* (London, 1922) 280-281

¹³¹ See the judgement of the Privy Council in the Special Reference as to the Ownership of the Un-allotted Land in Southern Rhodesia: In *Re Southern Rhodesia*. A.C. 1918

lands which were acquired by the community members through the partitioning of hitherto communally owned lands.¹³² For example, all lands in Eastern Nigeria originally belonged to communities. However, individuals who needed lands for personal uses like farming and the establishment of homestead obtain such from the community leaders on fulfilment of certain stipulated prerequisites, say payment of stipulated fees or performance of some traditional rights. Lands acquired via this method automatically transforms into either family or individual property and would be inherited by the descendants of the person at his demise.¹³³ Above arguments which tend to present private ownership as an integral part of African custom and tradition has been refuted on the ground that land acquired by an individual through self-help, inheritance, purchase, grant from the traditional authorities or as gifts from the previous owner(s) devolves on the children of the individual at his demise, and thus reverses back to family property pending when it is partitioned once again between the descendants of the new landowners.¹³⁴

More so, the notion that private property ownership is unknown to pre-colonial African customs and societies has also been dismissed by various customary land management scholars as untrue as they opine that such claim was only a diversionary strategy employed by traditional pre-colonial land administrators at the inception of colonialism in an attempt to protect their collective heritages from the onslaughts of the capitalist colonisers whose mission were believed to be essentially fuelled by their quest for land and other natural resources¹³⁵. According to this group of people, communalism has had a significant symbolic value in the shaping of pre-capitalist African societies and has obviously proved to be an effective and ingenious contrivance in the struggle against the alienation of indigenous lands to outsiders and the colonial masters;¹³⁶ a development which expectedly did not go down well with the capitalist colonisers. In the words of Gutto, “colonisation was essentially a quest for land, a mission whose fulfilment necessitated negation or marginalization of pre-existing property relations and the

¹³²Epiphany Azinge et al, *Restatement of customary law*, p. 208

¹³³Arua, E.O. & Okorji, E.C. ‘Multidimensional analysis of land tenure systems in Eastern Nigeria’. (1997) p. 6. <www.fao.org/docrep/W6728T/w6728t14.htm#E11E12>. Accessed 07/08/2018

¹³⁴Olawoye, C. O, *Title to Land in Nigeria*. (Evans Brothers Nigerian Publishers Ltd, Ibadan 1974) 20-21

¹³⁵ Gutto, S. *Property and Land reform; Constitutional and Jurisprudential Perspectives*. (Butterworth Publishers, 1995) p. 20- 21

¹³⁶ Chanok, M. ‘A peculiar sharpness: An Essay on Property in the History of Customary Law in Colonial Africa’. (1991) *The Journal of African History* 31(1), p. 71

creation of new, capitalist-oriented property regime”.¹³⁷ The general fear within various African communities was that the actualisation of the colonial masters’ land acquisition drive would surely necessitate a drastic paradigm shift in land matters across African landscape. Thus, various African communities devised and elevated communal ownership principle as a defence mechanism aimed at shielding their heritages from the colonial expropriators.¹³⁸ To this effect, vast tracts of vacant lands preserved by villagers for generational expansion, observation of religious rites or for other activities like grazing were hastily reconceived by the communities as belonging to someone to avoid them being declared *terrae nullius* and expropriated by the colonial masters.¹³⁹ This communal ownership contrivance initially worked in favour of the communities as it placed the African traditional leaders in better position to negotiate with the colonial masters, terms that were grossly to the advantage of their various communities. However, the euphoria of the acclaimed successes of the communal ownership coinage did not last long as the colonisers swiftly usurped the situation for their personal aggrandizement. In attempt to strengthen their controls over African territories, African traditional leaders were oftentimes manipulated and coerced to become puppets in the hands of the colonisers and were made to endorse colonial policies that were conspicuously against the interests of their various communities.¹⁴⁰ African leaders who refused to yield to the whims and caprices of the colonisers were deposed and often imprisoned, giving way for the enthronement of those traditional leaders whose reigns would be sympathetic to the colonial agenda.¹⁴¹

¹³⁷ Gutto S. *Property and Land reform*; p. 20

¹³⁸ Rachael S. Knight, ‘Statutory Recognition of Customary Land Rights in Africa’. P. 21

¹³⁹ Ibid

¹⁴⁰ Ibid. Page 22

¹⁴¹ A case in point was the dethronement and imprisonment of Jaja of Opobo (1821-1891) for his refusal to allow the British colonisers and merchants free right of trade and an unrestricted reign over his kingdom. He was invited for discussion in 1887 aboard the Goshawk warship by Harry Johnson, the then British Vice-Consul, in attempt to resolve areas of friction between Opobo and the British traders and officials. Johnson dishonourably reneged from his promise of letting King Jaja go after the meeting. He was arrested right there and tried in Gold Coast, charged and imprisoned in West Indies. He died years later on his way back after he appealed against his unjust imprisonment and won. Also, in 1861, king Kosovo of the present-day Lagos state, Nigeria was deposed by the British and his son Akintoye was enthroned as his replacement. See Abdulsalami Muyideen Deji, ‘Historical Background of Nigerian Politics’, 1900-1960’ (2013) IOSR Journal of Humanities and Social Science (IOSR-JHSS) Volume 16, Issue 2, pp. 87 & 88

To this effect, the expected benefits of the concept of communalism which at one point proved to be an effective and fantastic mechanism devised not only to ensure a relatively permanent access and usufructuary rights to the basic means of production for the indigenous communities, including women and other vulnerable members of the society, but also a mechanism for curtailing the alienation of native land to strangers¹⁴² could not be realised, as the colonisers chose to regard communal lands as belonging to nobody. The colonizers decided to vest rights over all acclaimed vacant land and those taken from indigenous communities on the Crown.¹⁴³ Reflecting on the existence of bundle of rights among indigenous Africans and its attributes, the colonial masters concluded that:

...the estimation of the rights of [the native] tribes are always inherently difficult. Some tribes are so low in the scale of social organisation that their usage's and conceptions of rights and duties are not to be reconciled with institutions or the legal ideas of civilised society. [Thus], such a gulf cannot be bridged. It would be ideal to impute to such people some shadow of the rights known in our law and then to transmute it into the substance of transferable rights of property as we know them".¹⁴⁴

The introduction of the colonial masters' institutional and legal ideas of land ownership and management brought about a radical shift which permanently changed the meaning and understanding of land and its administration in Africa.

Following the adoption of the colonial masters' institutional and legal ideas of land ownership and management for the regulation of land matters across Africa and its overwhelming influence over the understanding of the meaning, value and processes of land acquisition and transmission, the influence of customary tenure system and institutions were undermined. Thus, customary tenure and its attributes were, over time, erroneously seen as a dying culture that would naturally fizzle out in the face of the onslaught of modernization, commoditization and land titling, giving way to streams of well-articulated statutory provisions that would effectively govern all tenorial matters at every level of the African society. Though it is an undeniable fact that the paucity of authoritative works and the oral tradition of our customary legal system has forced

¹⁴² Chanok, M., *Land Reform: Issues and Challenges. A comparative overview of experiences in Zimbabwe, Namibia, South Africa and Australia* (Konrad-Adenauer-Stiftung, 2003). P. 6

¹⁴³ *Re Southern Rhodesia* (1919) AC 211 CD 7509 at 233-234

¹⁴⁴ *Ibid*

various aspects of our customary practices to the “endangered species” list. That notwithstanding, customary system has, against all odds, continued to and will always play a significant role in the regulation of societal value system. The practical reality on ground today exposes or underpins the unrealistic nature of this extermination assumptions. This perspective is informed by the realization that customary legal systems have peculiar attributes and strengths that best meet local needs, particularly the needs of women, vulnerable groups and the rural poor, at various rural communities in sub-Sahara Africa, and any attempt at undermining the indispensability of customary rules of engagement at the local level will only leave behind strings of lacunas which statutory legal provisions would be grossly ill equipped to handle. Thus, it becomes pertinent for policy makers to seek ways of harmonizing and accommodating these unique attributes of customary provisions, particularly those aspects that offer rays of hope and security to women, to work in tandem with the available statutory provisions for the benefit of the entire populace.¹⁴⁵ The recognition and protection of traditional customary land rights, being it communal, family or private rights, remains an indispensable element for the protection of the land rights of the rural poor dwellers whose actions and legal title to lands are generally regulated by the customary law provisions.

It is important to note that there exist landmark rulings by various courts of competent jurisdiction which have upheld and consciously given legal credence to various aspects of the African customary principles and native laws in relation to land ownership and management despite some statutory provisions to the contrary. For instance, in Nigeria, despite the fact that the then General Olusegun Obasanjo¹⁴⁶ led military government in 1978 promulgated the Land Use Act which vested the ownership and management of all rural lands to the constituted Local Government Areas within the jurisdiction of which the land is situated. On this issue, the Supreme Court still ruled among other things in that the introduction of the Land Use Act of 1978 does not by any means set aside the existing laws of the land which included the unwritten customary law and common law provisions.¹⁴⁷ Before the above judicial declaration, the court had established in *Osu v.*

¹⁴⁵Freudenberger Mark, ‘The future of customary tenure; Options for Policymakers; Property Rights and Resource Governance Briefing Papers, #8’. USAID (2013). <<https://www.land-links.org/issue-brief/the-future-of-customary-tenure/>>. Accessed 09/12/2017

¹⁴⁶ General Olusegun Obasanjo is a Nigerian elder statesman who ruled the country as a military dictator between 1976 -1979. He was also the elected civilian president between 1999-2007

¹⁴⁷ Ibid (n 523)

*Igiri*¹⁴⁸ that in determining claims of land ownership under customary law, the main form of evidence remains the traditional title concept which could best be established by way of ancestral history of ownership.

The fact that the existence of various well-articulated statutory legal provisions, both at the national and international level, have been unable to either obliterate the ideals of customary law provisions or dowse its popularity among rural dwellers is a clear indication that it is a concept that has come to stay. Customary law principles have continued to play a significant role in moderating societal values and engendering rural development and sustenance, including land rights and social emancipation of women and other vulnerable groups in Nigeria.

2.4: EVALUATING CHANGES TO THE MEANING AND VALUE OF LAND

Lands within the African context in general had completely different meaning and values before the advent of colonisation. According to Cherryl Walker, " while access to land (for growing crops, running stocks, hunting, access to water, gathering wild foods, fuel, building materials, medicinal herbs etc.) was the basis of life, land was not a commodity that was 'owned' in the way that the European powers understood it, nor was it a repository of value as it was to become under capitalist relations of production".¹⁴⁹ Land to Africans constitutes the basic element of life and family or communal existence. It embodies more personal, fundamental, and in many instances, mystical attributions which are distinct from the European perspectives and system of valuation.¹⁵⁰ During the pre-colonial era, climate conditions, non-availability of labour and technical know-how were the main challenges faced by Africans of pre-colonial era. There was abundance of land as population was relatively low.

As a result of poor technological advancements for mechanized agriculture across African communities, human labour took the centre stage during this era, placing much premium on human accumulation as against the contemporary unimaginably stupendous values ascribed to property acquisition. The fact that agricultural activities were almost exclusively done manually placed human labour on higher demand. The amount of land cultivated by any household annually was highly dependent upon the size of the workforce within that family or the ability of the family to hire external hands to help

¹⁴⁸ (1988) 1 NWLR (pt. 69) 221

¹⁴⁹ Walker Cherryl, 'land reform in southern and eastern Africa', p. 8

¹⁵⁰ Robert Home, 'Culturally Unsited to Property Rights?: Colonial Land Law and African Societies'. (2013) Journal of Law and Society, Vol. 40, Number 3. P. 405

out in their farming activities.¹⁵¹ Obviously, labour constraint had always constituted major challenge to agricultural operations in communities with low population density in Africa. To meet the demand for ever increasing human labour, slave acquisition¹⁵² and polygamy became the order of the day in many communities of sub-Sahara Africa. In the case of Nigeria to be precise, polygamous relationships were regarded as one major stake for extra manpower which leads to increased agricultural output even as accumulation of human beings (slaves, wives and children) became the main yardstick for measurement of power and wealth.

Polygamy also thrived because control over fleets of women was seen as not only a guarantee for both cheap and free domestic cum agricultural labour, but also a sure grip on human reproduction and accumulation for future agricultural expansions. It is believed in some communities and traditions within Nigeria, particularly among the Igbos that “the size of a man’s family signifies the size of his wealth, therefore marrying many wives equalled having more children, having more children equalled having more farm hands. A larger farm and a lot of farm hands equalled bigger barns and a wealthier man”.¹⁵³ Thus, Igbos popularly say “Nwauba or Nwabuaku”, meaning children are wealth. This idea tends to explain the correlation between polygamy and agricultural labour supply in many Nigerian communities. The above development however resulted in a negotiated balance for the maintenance of family relationships.

Considering that customary land rights are socially entrenched and negotiable, its access influenced by socio-cultural factors and are often dependent on intra-family and community dynamics. A person’s rights to land and other resources often depend on the ability of the individual to negotiate and navigate social forces and relationships.¹⁵⁴ Thus, in the Patrilineal Igbo communities of Eastern Nigeria, whereas men gained the upper hand as the owners or in most cases the custodians of land and controllers of the labour sources, women in turn use their child-bearing capabilities and domestic labour

¹⁵¹ Walker Cherryl, ‘land reform in southern and eastern Africa’, p. 8

¹⁵² The revelation that many of the slaves that were being captured and traded during the era of slave trade were never exported feeds into the narrative that slave acquisition had always been a yardstick for measurement of wealth and source of agricultural labour for pre-colonial African societies. See Klein, M. A, ‘Slavery’, in *The Oxford encyclopaedia of economic history*, Oxford. Mokyr, J. (ed.) (University Press, 2003) p. 504

¹⁵³ Pitlane Magazine, “Practice of Polygamy in Nigeria”.

<www.pitlanemagazine.com/cultures/practice-of-polygamy-in-nigeria.html>. Accessed 16/01/17

¹⁵⁴ Rachael S. Knight, ‘Statutory Recognition of Customary Land Rights in Africa’. P. 26, 32

provision as leverage and a strong bargaining chip to gain access to land and other resources.¹⁵⁵ This arrangement guaranteed women's access to land and security of tenure. In the words of Guy, "under the pre-colonial homestead arrangement, women were given access to productive land, which they worked themselves. They were in control of the process of agricultural production and retained for their use a substantial proportion of the product of that land and of their labour. [Though] work was heavy, [but] it took place within a community which provided substantial security. The value attached to fertility gave the possessors of that fertility [women] social standing and social integrity".¹⁵⁶ The unfortunate implication of the above scenario was that childless wives and unmarried women were shut out of this mutual and protective social security contraction, thereby leaving them as object of scorn and mockery before men, fellow wives, and in some cases, the general public.

In view of the role and influence fertility accords to women in some African communities as mentioned above, the higher premium placed on male child across Africa,¹⁵⁷ as well as the disdain, disparity and depravity arising from lack of same, various communities in Africa adopted different social-cultural mechanisms with the aim of mitigating the harsh effects and subjugations associated with childlessness, lack of male children or being single as it relates to rural African women. For example, among the Igbos of Eastern Nigeria, barren women, women without male children or those unable to get married automatically enjoy the privilege of marrying fellow younger women who in turn would be expected to bear children, particularly male children for them through their husbands if still alive, or by any other man of their choice. This arrangement is completely different from the contemporary same-sex marriage as practiced across many countries of Europe and America. There is absolutely no act of homosexuality or intercourse to the relationship between the "female-husband" and the bride.¹⁵⁸ The act of procuring a wife, as it is commonly known, accords the female-husband all the rights and privileges enjoyed by her male counterparts.¹⁵⁹ The female husband pays the bride price, and is regarded as the

¹⁵⁵ Walker Cherryl, 'land reform in southern and eastern Africa', p. 9

¹⁵⁶ Guy, J. 'Gender Oppression in Southern Africa's Pre-capitalist Societies' in *Women and Gender in South Africa to 1945*. Walker, C (ed), (David Philip, Cape Town and James Currey, London, 1990) P. 46

¹⁵⁷ Nwoko, K. C, 'Female Husband in Igbo Land, South East Nigeria'. (1st March 2012). The Journal of Pan African Studies, vol. 5. P. 72

¹⁵⁸ Achebe Nwando, *The Female King of Colonial Nigeria: Ahebi Ugbade*, (Indiana University press, 2011) p. 75

¹⁵⁹ Ibid., p. 75

sociological father to any offspring resulting from such a union.¹⁶⁰ This is obviously a traditional way of legalising what could have amounted to the birth of illegitimate children,¹⁶¹ and also a form of social-improvisation against the pains and challenges of childlessness, inability to get married or lack of male children in rural Igbo communities. These mutual states of inter-dependence which instilled high degree of balance, mutual respect and peaceful co-existence within homesteads and communities at large was practically ignored by the colonial masters at their arrival. Thus, the social interplay that had regulated relationships between men and women of the pre-colonial era, as well as their access to land and other means of production was shattered, exposing homesteads to various pressures resulting in sweeping and authoritative changes.

The transformation of these pre-capitalist social order and homestead relationships unavoidably introduced homesteads into the monetary economy where survival or otherwise is predicated on the availability of cash for the purchase of goods and services which rural women in Nigeria can hardly afford. This also had far-reaching effects on customary tenures and traditional institutions as the complex web of rights that had conditioned and sustained households' relationships, marriages and women's access to land and other natural resources was dismembered and rearranged. Thus, bundle of rights enjoyed by men on behalf of the family and communities - this includes right to land, free women's labour and right of control; a trend that continued even beyond the colonial onslaught- are now being exercised in individual capacities. Traditional African man now sees himself as an individual, rather than a responsible representative of his family unit who holds family property in trust for the benefit of all members of the group.¹⁶²

2.5: THE EMERGENCE OF DUAL LEGAL AND ADMINISTRATIVE SYSTEMS

Colonial experience also brought about dual legal and land tenure systems in sub-Saharan Africa. The concept of legal pluralism which presupposes mutual existence of the indigenous African legal provisions side by side with both the statutory legal provisions and every other forms of law was conceived in the light of the colonial

¹⁶⁰ Ibid., p. 76

¹⁶¹ Ibid., p. 78

¹⁶² USAID, 'Land tenure, property rights and gender; challenges and Approaches for Strengthening Women's Land Tenure and Property Rights'.
<www.USAID_Land_Tenure_Gender_Brief_061214.pdf1951445798.pdf>. Accessed 12/02/18

incursion and the introduction of colonial statutory legal order into the mainstream of various pre-colonial African societies. The jurisdictions of these customary laws and the recognition of the powers of the administering customary institutions were historically tied to group membership. To this effect, the activities of numerous ethnic and linguistic pre-colonial African communities were undoubtedly governed by equal margin of divergent customary principles.¹⁶³ Thus, each pre-colonial African community were governed by indigenous customary law principles which are local in nature.

As colonial experimentations in Africa culminated into the “balkanization” of the continent among the European colonial masters in fragrant disregard to the existing communal groupings and traditional boundaries, incompatible groups with varying customary rites and backgrounds were lumped together to form new territories and were subjected to newly established laws and institutions to regulate activities within the newly created territories.¹⁶⁴ The introduction of these newly adopted colonial laws grossly curtailed the strengths and reach of customary law principles. Customary laws and institutions are now to be recognised only to the extent allowed by state laws operational within each of the colonial imposed borders.¹⁶⁵ The deposition of traditional rulers whose activities and mode of administration negate the British colonial and capitalist agenda, as mention earlier, also points to the validity of the above claim.

The above scenario was boosted by the principle of “legal centrism” which provides that the validity or otherwise of any legal principle, being it religious or customary, is dependent upon the degree of its conformity with the provisions of the state laws and its recognition by the state actors. This is owing to the fact that all laws are believed to emanate from the state.¹⁶⁶ Meanwhile, state recognition of religious or customary legal principles may either occur in a “normative” format which involves institutional recognition of substantive religious cum customary legal provisions as valid laws, or by “institutional recognition”, a situation whereby the actions of religious and customary

¹⁶³ Abdulmumini A. Oba, ‘The Future of Customary Law in Africa’, in Jeanmarie. Fenrich, Paolo Galizzi, and Tracy Higgins (eds.), *The Future of African Customary Law* (Cambridge University Press 2011) P. 58, 62–65

¹⁶⁴ Woodman, G. R. ‘A Survey of Customary Laws in Africa in Search of Lessons for the Future’, in Jeanmarie. Fenrich et al (ed), *The Future of African Customary Law* (Cambridge University Press 2011). P. 9, 30

¹⁶⁵ Allott, A. N, ‘Towards the Unification of Laws in Africa’, 14(2) INT’L & COMP. L. Q. 366, 370 (Apr. 1965)

¹⁶⁶ Griffiths, J. ‘What is Legal Pluralism’, J. LEGAL PLURALISM No. 24 at 1, 2–6 (1986); see also Abdulmumini A. Oba, *The Future of Customary Law in Africa*,. P. 58, 62–65

institutions are recognised by state laws as being enforceable.¹⁶⁷ This formed the crux of the British colonial rule in West Africa and was adopted and championed by Frederick Lord Lugard¹⁶⁸ as a way of bridging and resolving the confusion and impasse generated by the forceful extension of the British statutory legal principles to its colonies. The principal objective of Lugard's leadership strategy was aimed at enthrone mutual respect and harmonious interplay between various legal provisions within the multicultural British protectorates and colonies in Africa. To achieve this, he opined that laws indigenous to the various British colonies must be respected as long as it is not repugnant in its form and compositions. As a result, he directed that "British courts shall in all cases affecting natives (and even non-natives in their contractual relations with natives) recognize native law and custom when not repugnant to natural justice, and humanity or incompatible with any ordinance, especially in matters relating to marriage, land and inheritance".¹⁶⁹ Laws were put in place to define the occasion and manners of application of customary laws. This was done in Nigeria through the provisions of the Supreme Court Ordinance of 1876 of the Lagos colony.¹⁷⁰ This ordinance sought to resolve conflicts arising from the existence of multiple legal provisions over a single case. It also defined subject matters that fall under the jurisdiction of the customary law, as well as introduced the concept of "repugnancy test" in relation to customary law application. The ordinance stipulates thus;

Nothing in this Ordinance shall deprive the Supreme Court of the right to observe and enforce the observance, or shall deprive any person of the benefit, of any law or custom existing in the said Colony and Territories subject to its jurisdiction, such law or custom not being repugnant to natural justice, equity and good consciousness, nor incompatible either directly or by necessary implication with any enactment of the Colonial Legislature existing at the commencement of this Ordinance, or which may afterwards come into operation.¹⁷¹

¹⁶⁷ Woodman, G. R. 'A Survey of Customary Laws in Africa'. P. 9, 18

¹⁶⁸ Lord Lugard was the first Governor General of the colonial Nigeria.

¹⁶⁹ Emery Vanessa, 'Women's Inheritance Rights in Nigeria: Transformative Practices'. <www.law.utoronto.ca/documents/ihrp/HIV_emery.doc>. Accessed 20/09/2016

¹⁷⁰ Badaiki, D. A, *Development of Customary Law* (Ticken Publishers, 1997)

¹⁷¹ Supreme Court Ordinance No. 4 of 1876, & 19, 1 LAWS OF THE COLONY OF LAGOS (Rev. Ed. 1901)

2.6: CONCLUSION

Analysis so far has centred on the nature, value and understanding of land and its constituents from a historical perspective. This has helped to provide a better and informed understanding of the concept of land administration from the pre-colonial point of view, the tenure systems, distinctive ideologies upon which inalienability of land and communal ownership concepts were based, as well as the unprecedented transformations colonialism and its experimentations has brought on the traditional land tenure system, land administration and customary law provisions.

However, the transformations and limitations imposed on the customary law jurisdiction and applications subsist beyond the colonial era, as post-colonial states chose to maintain the status quo. Despite these limitations against the operations of customary law principles, its provisions still guide the conducts of large number of indigenous populations. This is owing to the fact that the limited areas of jurisdiction left to the customary law principles are matters of great personal importance which are inevitable for the survival and peaceful co-existence of vast majority of indigenous populace.¹⁷² There also exist various aspects of traditional lifestyles and relationships that colonial system of administration and legal system are ill equipped to comprehend and administer. Post independent African states, Nigeria inclusive, at the point of their independence, adopted and in most cases transformed various aspects of the colonial legal systems to adapt to their peculiar environments. Thus, till date, the common law principles and other British colonial enactments continuously shape the nature, value and understanding of land, tenure systems in our societies, as well as enrich and influence the Nigerian legal system albeit to the degrees and allowance granted by prevailing Nigerian local legislatures.

¹⁷² Jeanmarie Fenrich et al. 'The Future of African Customary Law', Introduction. P. 1-2

CHAPTER 3: LEGAL PLURALISM IN NIGERIAN LAND LAW

3.1: INTRODUCTION

This chapter provides the definition and clear understanding of the concept of legal pluralism in the context of Nigerian legal system. It also explains how the heterogeneous nature of the Nigerian state, together with her colonial experiences, has indirectly mapped out the country for inevitable adoption of pluralistic land tenure and legal system. This informed the tripartite formation of the Nigerian legal system with stems from the Received English Laws, the Customary Law provision and the Indigenous Statutes. These laws provide the basis and rules of engagement governing all land matters, and particularly define the acceptable ways and processes of land administration, acquisition and its appropriation in Nigeria.

Thus, the administration of land and its management in Nigeria involves complex interplay of various laws and rules of engagement- both formal and informal. The pluralistic nature of Nigerian legal system entails that both the customary, religious, national, regional and international legal provisions operate side by side, complement each other and in most cases compete for dominance. This holds lots of promises and concerns, the usefulness of such system hinges on the ability to carefully manage their operations. The chapter further explores the foundations, dynamics, modus operandi and peculiar attributes of each of the legal systems, emphasising their strengths and pointing out inherent lacunas.

It further established that the security of rights to land and property can only be guaranteed when access, control, ownership and right to appropriate one's land is protected from involuntary and arbitrary removal, with the exception of some special circumstances that would occasion an involuntary removal of a person from his or her land or property in the interest of the state, the general public or for the safety of the concerned. This however must be subject to acceptable legal procedures and international best practices. The summation is a call for a synergy between the different legal sources for the achievement of sustainable development and better livelihood for all Nigerians.

3.2: LAND LAW AND LEGAL PLURALISM IN NIGERIA

legal pluralism can be defined as ‘the existence of divergent legal sources within a given geographical location. These legal sources can be either formal or informal system. The

idea of legal pluralism is premised upon the conviction that availability of divergent arrays of both legal and quasi-legal securities and justice apparatus offers individuals, communities and states invaluable choices in their quest for survival, self-emancipation and sustainable development.¹⁷³ The pluralistic nature of Nigerian state is clearly manifested in the composition of her legal system. The Nigerian legal system encompasses the “totality of laws, or legal rules and the legal machinery, which operate within Nigeria as a sovereign and independent country”.¹⁷⁴ The Nigerian legal system has a tripartite formation as it is made up of the received English laws, the customary laws and the indigenous statutes. This accounts for the existence of different legal systems which exist and operate side by side in many parts of the country. For example, the penal code is in operation in the northern states; the provisions Act of 1959 and the accompanying Criminal Procedure Code Cap 81 of the federation 1990 (CPC) apply to all states under its jurisdiction in northern Nigeria; The Criminal Code Act of 1961 and its accompanying Criminal Procedure Act Cap 80 Law of the Federation 1990 (CPA) apply to southern Nigeria; and Sharia panel legislation applies to 12 Northern states, while the accompanying criminal procedure codes apply to those states that have adopted them. This "legal pluralistic" nature of Nigeria often generates controversies as there always arise frictions over which legal provisions that could be adopted or preferred in various circumstances, especially as it concerns succession under intestacy or rights of property inheritance.¹⁷⁵ For instance, succession under indigenous law and custom in Nigeria does not depend on the type of marriage entered into by the deceased. Insofar as the deceased has identified with the indigenous community, along with their practice and custom before death, the deceased's intestate property will be devolved according to the provisions of the indigenous laws and custom. Exceptions however exist in situations where the deceased has implicitly or expressly denounced the

¹⁷³ Roseveare, C. Rule of Law and International Development (2013) London, DFID. P. 39.

https://assets.publishing.service.gov.uk/media/57a08a0be5274a27b20003c7/Literature_Review_RoL_DFID-GSDCH-PEAKS_FINAL.pdf. Accessed 29/ 04/2018

¹⁷⁴ Okonkwo C.O, Introduction to Nigerian Law. (Sweet & Maxwell London 1980) at p. 40

¹⁷⁵ Itua, Paul Ohkaide, ‘Legitimacy, Legitimization and Succession in Nigeria’: An appraisal to section 42(2) of the constitution of the Federal Republic of Nigeria 1999 as amended on the rights of inheritance’. (2012) Journal of Law and conflict Resolution, Vol. 4(3) p. 33.

<https://www.academia.edu/2321460/Legitimacy_legitimation_and_succession_in_Nigeria_An_appraisal_of_Section_42_2_of_the_constitution_of_the_Federal_Republic_of_Nigeria_1999_as_amended_on_the>. Accessed 29/08/2018.

indigenous law and custom before death. Under Islamic law, the major determining factor is whether the deceased was a Muslim at the point of death. However, these positions have been challenged in the celebrated case of *Cole v. Cole*.¹⁷⁶ Above scenario shows the constraints surrounding the choice of legal provisions to be adopted or preferred in intestate situations in Nigeria, as well as how similar issues can be submitted to different laws and legal systems depending on the ethno-cultural and religious affiliations and choices of the concerned applicants.¹⁷⁷

All land matters in Nigeria are governed by sets of divergent rules of engagement emanating from the aforementioned three legal sources. It defines the acceptable ways and processes of land administration and appropriation. The right to own, control and appropriate one's property (particularly land) provides great benefits which include a guaranteed place to live, a secured means of livelihood, as well as a measurable wealth capacity that could leverage additional economic benefits. Land in Nigeria is considered a primary source of wealth, power and social status, as it provides the basis for food security, guaranteed place of abode and other economic activities. More so, a secured access to some basic services like sanitation and electricity, access to basic resources such as water, and the ability to make long-term investments on land are predicated on one's rights to land and its security.¹⁷⁸ It must be pointed out also that land in Nigeria has spiritual connotations as it serves as home to ancestors and is still being worshipped in some quarters.¹⁷⁹

It is trite that security of rights to land can be guaranteed when access, control, ownership and right to appropriate one's land is protected from involuntary and arbitrary removal, with the exception of some special circumstances that would occasion an involuntary removal of a person from his or her land or property in the interest of the state, the general public or for the safety of the concerned. Such removals must however conform to all known and acceptable legal procedures and international best practices;

¹⁷⁶ (1898) I.N.L.R. 15

¹⁷⁷ Smith, I. O, *Practical approach to Law of Real Property in Nigeria*. P. 156 & 157

¹⁷⁸ Food and Agriculture Organization (FAO) 2003b, "Rural Women's Access to Land and Property in Selected Countries: Analysis Based on Initial and Periodic Reports to the Committee on the Elimination of Discrimination Against Women (1997-2003)". Rome: FAO with IFAD and International Land Coalition.

¹⁷⁹ Arua, E.O. & Okorji, E.C. 'Multidimensional analysis of land tenure systems in Eastern Nigeria'. P. 2

such must be objective, contestable and devoid of discrimination.¹⁸⁰ This will guarantee both the rights of the land owners and the security of their tenures.

Land administration and its management in Nigeria involves complex interplay of various laws and rules of engagement- both formal and informal. The pluralistic nature of Nigerian legal system entails that both the customary, religious, national, regional and international legal provisions operate side by side, complement each other and in most cases compete for dominance. These sets of legal frameworks guiding the administration of land matters in Nigeria are discussed hereafter.

3.3: CUSTOMARY LAND LAW

Customary law is the rule or set of rules of conduct that regulate the rights and duties of any given indigenous society, evolving either by usage or immemorial practices which are binding to those under its jurisdiction. It represents the “unrecorded traditions and history of the people, practiced from the dim past and which has grown with the growth of the people to stability and eventually becomes an intrinsic part of their culture. It is a usage or practice of the people which by common adoption and acquiescence and by long and unvarying habit has become compulsory and has acquired the force of law with respect to the place or the subject matter to which it relates”.¹⁸¹

Before the advent of colonialism, the various communities, tribes and ethnic groups that made up the present-day Nigerian state had ways of administering themselves and ensuring peaceful coexistence and orderliness. These developed ways of life that existed among the various distinct pre-colonial communal entities formed their cultures and traditions otherwise known as customs. Through these, the indigenous customary laws evolved.¹⁸² These indigenous legal principles contain sets of rules regulating forms and processes of marriages and divorce, processes of land acquisition, land management and appropriation; particularly succession and inheritance which in many instances follow the traditional canon of descent, chieftaincy and other traditional social relationships thereof. Customary law therefore consists of established community rules and processes

¹⁸⁰ Habitat International Coalition, ‘Methodology for Monitoring the Human Right to Adequate Housing, (2004), <<http://www.hic-gs.org/document.php?pid=2408>>. Accessed 02/09/2018

¹⁸¹ Malemi Ese, *The Nigerian Legal Method* (Princeton pub., 2010) p. 154

¹⁸² Muna Ndulo, *African Customary Law, Customs, and Women's Rights*, 18 IND. J. GLOBAL LEGAL STUD. 87, 88 (Winter 2011)

governing the actions and relationships between community members in one hand, and between community members and outsiders.¹⁸³

Customary law has particularly been defined by the Nigerian Supreme Court as;

...the organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static. It is regulatory in that it controls the lives and transactions of the community subject to it. It is said that custom is a mirror of the culture of the people...customary law goes further and imports justice to the lives of those subject to it.¹⁸⁴

Customary laws are local in nature. The implication of its local and ancestral flavour is that its jurisdictions and that of its administrative institutions were historically determined by membership of that particular ethnic, tribal or linguistic group subject to its provisions. This meant that the affairs of numerous pre-colonial African ethnic, tribal or linguistic groups (groups constituting the present-day Nigerian state inclusive) were regulated by equal number of divergent and distinct customary legal principles.¹⁸⁵

At the inception of colonialism, the colonial masters were faced with the difficulty of administering these various divergent groups as separate entities. For the sake of administrative convenience, the colonial masters lumped together various traditional pre-colonial African groups within new territories and borders created along arbitrary lines, and introduced new laws and regulatory institutions which were to operate along the lines of these newly created territories.¹⁸⁶ Although the introduction of these new legal regimes did not obliterate the operations and jurisdiction of the customary law principles, however, it curtailed the scope and reach of the customary law jurisdictions. Thus, the scope, jurisdiction and application of customary law principles were by virtue of the colonial legal impositions significantly reduced to degrees of allowance granted by the formal or state sanctioned colonial laws.¹⁸⁷ This marked the birth of the laws that determine the modalities and circumstances under which indigenous customary laws could apply. This came to effect in part of the territory known today as Nigeria through

¹⁸³ Janet Pritchard et al. 'Securing community land and resource rights in Africa: A guide to legal reform and best practices' (2014) <<http://www.forestpeoples.org/sites/fpp/files/publication/2014/01/securingcommunitylandresourcesguideenglishjan2014.pdf>>. Accessed 02/08/2018

¹⁸⁴ *Oyewumi v. Ogunesan* (1990) 3 NWLR (pt. 137) at 182

¹⁸⁵ Abdulmumini A. Oba, 'The Future of Customary Law in Africa', P. 58, 62–65

¹⁸⁶ Woodman, G. R. 'A Survey of Customary Laws in Africa'. P. 9-18

¹⁸⁷ Allott, A. N, 'Towards the Unification of Laws in Africa', 14(2) INT'L & COMP. L. Q. 366, 370 (Apr. 1965)

the provisions of the Supreme Court Ordinance of 1876, Law of the Colony of Lagos.¹⁸⁸ The Colony of Lagos Ordinance sought to address the standard challenges arising from the existence of multiplicity of legal provisions on a given jurisdiction, and also spelt out the parties and exact subject matters to be covered by customary law jurisdictions.¹⁸⁹

In order to achieve the desired goal, the colonial administration introduced a validity test mechanism known as “repugnancy test” upon which the validity and applicability or otherwise of any given customary law provision is to be ascertained. However, the repugnancy test doctrine was formulated bearing in mind the colonial masters’ established policy of respecting all laws indigenous to the people of their colonies provided that the laws are not repugnant in its operations.¹⁹⁰ This position was clearly captured by Lord Lugard¹⁹¹ as he mandated that;

British courts shall in all cases affecting natives (and even non-natives in their contractual relations with natives) recognize native law and custom when not repugnant to natural justice, and humanity or incompatible with any ordinance, especially in matters relating to marriage, land and inheritance.¹⁹²

The amalgamation of the Southern and Northern protectorates in 1914 by the British colonial administration under Lord Lugard led to the formation of the present-day Nigerian state. At the point of the Nigerian independence in 1960, Nigeria, just like most of the other African countries, adopted and indigenised various aspects of the colonial laws, including the repugnancy test doctrine. The implication of the above position as applicable till this day in Nigeria is that any custom that runs contrary to the provisions of the “repugnancy test doctrine” or seen to be incompatible either directly or by implication with the laws in force- particularly those laws recognised by the colonial authorities, institutions and their cronies, and adopted by the Nigerian state at her independence- automatically became null and void and of no effect to the extent of its inconsistencies. Repugnancy clause, in this context, appeared as a channel for the propagation and enforcement of the English moral ethics. However, it has been

¹⁸⁸ Badaiki, A. D, *Development of Customary Law*. p. 27

¹⁸⁹ Supreme Court Ordinance No. 4 of 1876, 19 (1) Laws of the Colony of Lagos (rev. ed. 1901).

¹⁹⁰ Emery Vanessa, ‘Women’s Inheritance Rights in Nigeria: Transformative Practices’. pp. 23.

¹⁹¹ The first British Governor General of colonial Nigerian state

¹⁹² Emery Vanessa, ‘Women’s Inheritance Rights in Nigeria: Transformative Practices’. pp. 23

constantly stressed that the concept of repugnancy clause is not, and should never be measured against the backdrops of the British accepted moral conducts, but in accordance with the prevailing internal standards indigenous to the people of Nigeria.¹⁹³ A fact clearly recognised by even the colonial masters themselves as they believed that “it would be the grossest travesty of justice if ... judges in considering the customs were guided solely by European conception of right and wrong...the Privy Council affords many signal instances of a respectful treatment of foreign popular customs”.¹⁹⁴

Where certain customs adjudged to be popular among a given group, society or set of people is in conflict with the national or international statutory legal provisions, the application of the “repugnancy clause” in such instances should always put into consideration the prevailing social relations and ethics, as well as the reasons for, and the popularity of the accepted norms among the local communities. The idea behind this is predicated on the fact that customs are the condensed wisdoms of past generations, which are embodied into the living fabrics of the present-day existence, deriving its validity from societal acknowledgement. Social acceptability or common popular will accords validity to customary norms and statutory legal provisions alike.¹⁹⁵ Thus, it has been stressed that;

Immemorial custom is observed as a statute, not unreasonably; and this is what is called the law established by usage. Indeed, inasmuch as statutes themselves are binding for no other reason than because they are accepted by the judgement of the people, so anything whatever which the people show their approval of, even where there is no written rule, ought properly to be equally binding on all; what difference does it make whether the people declare their will by their votes, or by positive acts and conducts.¹⁹⁶

Thus, the Privy Council, in *Eshugbayi Eleko v. Government of Nigeria*,¹⁹⁷ declared that the validity or otherwise of any custom is dependent upon the consent of the native community that observe it. The above legal principle informed the criticisms that trailed

¹⁹³ Ibid

¹⁹⁴ Paul Vinogradoff, *Common sense in law* (Oxford University Press, 1959)

¹⁹⁵ Peter Orebech et al, ‘The Place of Customary Law in Democratic Societies’, in *The Role of Customary Law in Sustainable Development*, (Cambridge University Press, 2005) page 297

¹⁹⁶ Jes Bjarup, ‘Social Interaction: the foundation of Customary Law’, in Peter Orebech et al (ed), *The Role of Customary Law in Sustainable Development*, (Cambridge University Press, 2005) page 139

¹⁹⁷ *Eshugbayi Eleko v Government of Nigeria* (1931) A. C. 662 at 673

the Supreme Court's unfortunate and contradictory decision in *Meribe v. Egwu*¹⁹⁸ where the court declared the Igbo customary practice of "woman husband" repugnant, and inconsistent with the laws of the land. 'Woman husband' is a form of customary arrangement that accords barren women or women without male children the right to procure other women for their husbands as additional wives for the purpose of child bearing. The "woman husband" assumes the position of a sociological father and owns every produce of the traditional marriage arrangement, including the children resulting from such union. Such an arrangement is devoid of any act of homosexuality.

The Nigerian customary legal provision particularly contains customary land tenure principles which form the major indigenous system of land holding common to traditional Nigerian society. It is derived from the people's customary practices and made applicable by various Courts in Nigeria. The Nigerian Federal Evidence Act,¹⁹⁹ the Supreme Court Act,²⁰⁰ and the State laws of various states in Nigeria²⁰¹ contain the principles and processes of customary laws albeit with some limitations. For example, section 26 of the high court law of Lagos state²⁰² made provisions for the observation of all applicable customary practices that are not repugnant to the principles of natural justice, equity and good conscience or incompatible in whatsoever ramifications with any law of the land for the time being in force. This position is basically the same with the High Court Laws of other states of the federation.²⁰³

¹⁹⁸ Akpangbo, C. O, 'A 'Woman to Woman" Marriage and Repugnancy Clause: A Case for Putting New Wine into Old Bottles'. (1977) *The Journal of Legal Pluralism and Unofficial Law*, vol. 9, issue 14. PP. (87-95)

¹⁹⁹ Evidence Act No. 18 of 2011, 18 (98) Federal Republic of Nigeria Official Gazette, No. 80 (June 21, 2011), <http://www.lawnigeria.com/LawsoftheFederation/EVIDENCE-ACT-2011.html>. Accessed 03/02/2017.

²⁰⁰ Supreme Court Act of 1960, 17 (14) Laws of the Federation of Nigeria, Cap. S15 (rev. ed. 2006), <https://www.loc.gov/law/help/africa-customary-law.php>. Accessed 12/01/2015

²⁰¹ See the Customary Courts Law of 1972, 20 (2) Laws of Lagos State of Nigeria, Cap. C19 (rev. ed. 2003); The Evidence Act of 1945, 14 (2) Laws of Lagos state of Nigeria, Cap. E8 (rev. ed. 2003); Customary Courts Law of 1969, 10 (2) Laws of Akwa Ibom State, Cap. 40 (rev. ed. 1995).

²⁰² See section 26 of the High Court Law of Lagos State, Cap. H3, Laws of Lagos State. See also the Customary Courts Law of 1972, 20 (2) Laws of Lagos State of Nigeria, Cap. C19 (rev. ed. 2003); The Evidence Act of 1945, 14 (2) Laws of Lagos state of Nigeria, Cap. E8 (rev. ed. 2003); Customary Courts Law of 1969, 10 (2) Laws of Akwa Ibom State, Cap. 40 (rev. ed. 1995).

²⁰³ Ibid., P. 5, All the state High Courts in Nigeria made provisions for the enforcement of only customary laws that are not repugnant to natural justice, equity and good conscience. See s. 3 Cap 60 Laws of Western Nigeria 1959; s.28 Cap 49 Laws of

Despite the limitations to the scope and application of customary law principles in Nigeria due to the influence of the repugnancy test doctrine, it has continued to play significant role in the lives of large segment of the Nigerian populace. This is because the limited areas covered by customary law jurisdiction are mostly those areas that greatly impact on daily lives of many Nigerians. In addition to the above, for large number of rural dwellers, customary law provisions and its institutions perhaps remain the only affordable and readily available means of dispute resolution.²⁰⁴

Customary laws are not static, they are dynamic in nature. Indigenous or customary rules of engagement have over the years transformed or evolved to reflect various societal changes. As such, one obvious feature of customary law remains its flexibility which allows for the accommodation of societal changes.²⁰⁵ Customary laws seem to have always been subject to motives of expediency, that notwithstanding, it has exhibited an unquestionable adaptability to changing circumstances without entirely losing its definitive characteristics.²⁰⁶ This peculiar quality has helped it to adjust to external influences like the introduction of the European formal legal system, adoption of money economy, societal growth and urbanisation. A striking example of such changes in Nigeria could be seen from the evolution of the "Nuncupative will" in customary law and the use of wills in English form to affirm or vary customary rules of inheritance.²⁰⁷ Solutions of this nature were made possible and are easily adapted to as a result of the non-codification and flexibility of the customary law principles. Non-codification of customary law principles also allows for its gradual respond to modern time changes so as to meet the exigencies of the time. This was the position in *Dawodu v. Damole*²⁰⁸ in which Osborne C.J remarked that the "present Lagos customs are only modifications of the original Yoruba customs" as their general principles remain the same. They were only modified to meet present requirements.²⁰⁹ With regards to nuncupative will, a property owner who holds allegiance to native law and custom for one reason or the other may intend to institute or disinherit a particular person in the matter of succession or devolution of his estate. Such a person may before his death

Northern Nigeria 1963; s. 15(1) Cap 61 Laws of Eastern Nigeria 1963; s.26 Cap H3 Laws of Lagos State 2003.

²⁰⁴ Jeanmarie Fenrich et al., Introduction, in *The Future of African Customary Law*. P. 1-2

²⁰⁵ *Lewis v. Bankole* (1909) 1 NLR 82; *Balogun & Ors v. Oshodi* (1931) 10 NLR 36.

²⁰⁶ *Osborn. C. J, in Lewis v. Bankole* (1909) 1 N.L.R, 100.

²⁰⁷ *Ibid.*, p. 555

²⁰⁸ (1958) 3 FSC 46

²⁰⁹ T. O. Alias, *Nigerian Land Law*. 4thedn. (Sweet and Maxwell, 1971) P. 180

disclose before witnesses the person or persons entitled to inherit his estate. This is known as a nuncupative will, and where this is the case, the intention of the deceased property owner when proved, takes precedence over all rules of customary law. This exhibits the flexible nature of customary law.²¹⁰

Other evolutionary processes occasioned by the flexible nature of the customary law include the adoption of "family verdict mechanism" in determination of cases in situations where the prevailing customary law provisions are causing grievous hardship or disagreement among the family members. In situations of this sort, families may opt for other rules of inheritance which they feel accords with wisdom. It was to this effect that the court also in the same *Dawodu v. Damole* case mentioned above, held that though the "Idi-Igi" system of property devolution may be the applicable custom, but that the alternative customary rule of "Ori-Ojori" whereby property is shared per head, as against per household in a polygamous setup, might be applied in case of disagreement among the beneficiaries.²¹¹

There are also customary law evolutions occasioned by rules of natural justice. Customary law provisions and its practices have on number of occasions been subjected to various rules of validity tests as contained in the Evidence Act, Supreme Court Act and the High Court Laws of various states in Nigeria.²¹² Thus, a court may reject the application of aspects of the customary law if it feels that such provisions negate the rule of natural justice.²¹³ For instance, the court in *Re Whyte*²¹⁴ refused the application

²¹⁰Smith, I. O, *Practical Approach to Law of Real Property in Nigeria*. P. 564

²¹¹ Ibid., p. 564

²¹² See Customary Courts Law of 1972, 20 (2) Laws of Lagos State of Nigeria, Cap. C19 (rev. ed. 2003); The Evidence Act of 1945, 14 (2) Laws of Lagos state of Nigeria, Cap. E8 (rev. ed. 2003); Customary Courts Law of 1969, 10 (2) Laws of Akwa Ibom State, Cap. 40 (rev. ed. 1995).

²¹³ See *Edet v. Essien* (1932) 11 N.L.R 47 at 48; court declared as repugnant, a custom that entitled a man to have the children of his betrothed wife fathered by another man, pending the refund of bride price.

²¹⁴ *Re Whyte* (1936) 18 NLR, 70: This was a case concerning the estate of a native of Fanti in Gold Coast (presently Ghana) who lived and died in Nigeria, survived by his wife, an infant daughter and a sister. Among the Fanti, succession is matrilineal, and a widow has no share in her deceased husband's estate. The sister who lived in Gold Coast came to Nigeria to claim the entire estate in accordance to Fanti law. She offered to educate her niece in the Gold Coast out of the estate. The Administrator-General, against this, proposed to the court that he be remaining one third of the deceased estate to the daughter; and also, that letters of administration be granted to the widow as the daughter's legal guardian. Since the deceased sister's rightful claim, if granted, would result in the separation of the daughter from her mother. The court approved the alternative scheme of distribution as proposed by the Administrator-General.

of a customary rule of inheritance which would have resulted in the separation of a daughter from her mother.

Another feature of customary land tenure system is that its application depends highly on sufficient proof since customary laws are not codified and may vary from one place to another. The proof may be through witnesses, books or by calling assessors. The Evidence Act²¹⁵ provides that “a custom may be adopted as a part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence; the burden of proving a custom shall lie upon the person alleging its existence”.²¹⁵ However, according to section 14(2) of the same Evidence Act, a judicially “Noticed Custom” requires no proof.²¹⁶ This means that the existence or otherwise of certain customary rules of engagement may not require proof of evidence at the Area or Customary Courts as these lower courts are believed to be vast and competent over matters relating to customs and traditions. At the same time, courts of lower jurisdiction must be cautious in the adoption of the principles of “judicial precedence” in adjudicating customary matters so as not to lose touch with the ever-dynamic nature, and variations that characterise the customary legal system and its application. Despite the variations and risks of divergent interpretations, customary law provision has proved to be an important element of our legal system, as its functionalities in the regulation of household relationships, land matters and general activities of mostly rural community dwellers can never be over-emphasised.

3.4: ISLAMIC LAND LAW

Islamic law or Sharia contains the Islamic land tenure which is an independent system that is mostly applicable to the various states in the Northern part of Nigeria. It is derived from the Qur'an, the Sunna of Prophet Muhammad, the consensus of Islamic scholars which is basically known as *Ijima*, and also by analogy that is called *Kiyas*.²¹⁷ The Islamic law provisions are made applicable by the High Court laws of the various states in Northern part of Nigeria.²¹⁸ The Maliki form of Sharia is in operation in Northern Nigeria.²¹⁹ There have been debates in Nigeria on how appropriate it was to

²¹⁵ See section 14(1) of the Evidence Act, Cap. 112, Law of the Federation of Nigeria (LFN) 1990/ Cap. E14, LFN 2004, s 14(3)

²¹⁶ Smith, I. O, *Practical Approach to Law of Real Property in Nigeria*. P. 5

²¹⁷ Ibid. p. 6

²¹⁸ See section 22 of Cap 49, Law of Northern Nigeria, 1963, applicable in the various Northern States. Also see section 12(e) of the Sharia Court of Appeal Law, 1960.

²¹⁹ Adeniyi, P. O. (2011). Improving Land Sector Governance in Nigeria - Implementation of the Land Governance Assessment Framework. Abuja, World Bank.

regard Sharia law as customary law owing to the fact that its principles are derived from a written source, thus, its fixed and immutable characteristics.²²⁰ This debate on the appropriate status of the Sharia law in Nigeria was eventually laid to rest by the Supreme Court in *Alkamawa v. Bello*²²¹ where the court declared that the ‘Islamic law is not the same as customary law as it does not belong to any particular tribe. It is a complete system of universal law’.²²² The scope, jurisdiction, validity and applicability of Islamic law principles in relation to acquisition, management and transfer of land in Nigeria will further be examined in the next chapter of this thesis as part of the Hausa/Fulani system of land administration and property inheritance.

3.5: RECEIVED ENGLISH LAWS

English laws that form part of the present-day Nigerian legal jurisprudence include all English case laws which comprise the Common Law principles, the Doctrine of Equity, all Statutes and Subsidiary Legislations on Specified Matters, and the Statutes of General Application in force in England before 1st January 1900, as well as Statutes or Ordinances enacted by the local colonial legislatures in Nigeria before the Nigerian independence on the 1st October 1960 which are not yet repealed by Nigerian legislatures. The operations of these laws are dependent on the degree of allowance permitted by local jurisdictions and circumstances.²²³ It should be recalled that following the successful annexation of Lagos as a British colony in 1861, King Dosumu of Lagos entered into a treaty with the British authority and transferred all the land, ports, the Island of Lagos and its environs, with all the rights and appurtenances to the British Government.²²⁴ The Berlin conference of 1884/85 formalised the European Authorities’ scramble for territories in African continent,²²⁵ and the British colonial administration thereafter assumed legislative powers over parts of the entity that is known today as Nigeria through the Foreign Jurisdiction Act of 1896.²²⁶ By 1899, the

P. 8. <http://siteresources.worldbank.org/INTLGA/Resources/Nigeria_Synthesis.pdf>. Access 08/08/2018

²²⁰Emery Vanessa, ‘Women’s Inheritance Rights in Nigeria: Transformative Practices’. pp. 10

²²¹(1998) 6 SCNJ 127 at p. 128

²²² See section 32(2) of the Interpretation Act; *Idehen v. Idehen* (1991) 6 NWLR (pt. 198)

²²³ Ibid

²²⁴ Gbade Oladeojebi, *History of Yoruba Land* (Patridge Africa 2016). P. 1-5. See also Kunle Aina et al, Introduction/Historical Evolution of Land Law in Nigeria. P. 5- 6

²²⁵ Henry L. G and Kwame A. A, *Berlin Conference of 1884-1885*, in Encyclopaedia of Africa (Oxford University press 2010)

²²⁶ Kunle Aina et al, Introduction/Historical Evolution of Land Law in Nigeria. P. 7

operations of the British administrators has expanded further through to the Niger and Benue rivers axis (the present day Northern Nigeria), and by 1st January 1900, colonial administration was formally established across colonies and protectorates of Southern and Northern Nigeria.²²⁷

In an attempt to consolidate their conquests, various laws were passed by the British colonial administration to regulate the relationships between the colonial masters and the indigenes, particularly on matters relating to land, its acquisition, alienation and settlement. By virtue of section 45 of the Interpretation Act, Cap 89, Law of the Federation and Lagos, the English common law, doctrine of Equity and the Statutes of General Application in force in England on 1st of January 1900 were first introduced to operate in Lagos colony and the protectorate of Southern Nigeria. Thus, the English Law of real property which govern land tenures, acquisition and disposition of real property, estate inheritance, perpetuities and all other land related matters were adopted to become operational within the colony of Lagos and Southern protectorate.²²⁸

With continued increase in population occasioned by migration of indigenes and foreigners alike, there was an increase on the demand for land for both accommodations, agricultural and other developmental purposes within the colony of Lagos. The British colonial government, in response to the mounting challenges promulgated the Ikoyi Land Ordinance of 1908 which reserved certain land as crown land.²²⁹ As the challenges of land speculation and demand for land grew unabated, the colonial authority promulgated more laws to address the challenged.²³⁰ These Ordinances had significant effects on land administration system, land use and tenure related matters across Lagos Colony and the entire Southern protectorate.²³¹

²²⁷ Gbade Oladejebi, *History of Yoruba Land* (Patridge Africa 2016) p. 1-5

²²⁸ Some of these adopted statutes include the statute of Frauds of 1677, the wills Act of 1837, Limitation Acts of 1882; Real Property Act of 1845, the Partition Act of 1868, the Conveyancing Act of 1881, the Settled Land Act of 1882 and the Land Transfer Act of 1887. See Niki Tobi, *Cases and Materials on Nigerian Land Law* (Mabrochi Books, 1992) p. 2-4

²²⁹ Kunle Aina et al, Introduction/Historical Evolution of Land Law in Nigeria. P. 7

²³⁰ The British colonial authority acting on the advice of the Commission of Enquiry headed by Sir. Merry Tew, also passed the Crown Grants (Township of Lagos) ordinance, No. 18 of 1947, the Arotas (Crown Lands) Ordinance, No19 of 1947, the Epetedo Lands Ordinance, No. 20 of 1947 and the Glover Settlement Ordinance, No.21 of 1947.

²³¹ Kunle Aina et al, Introduction/Historical Evolution of Land Law in Nigeria. P. 7. See also *Ajibola v Ajibola* (1947)18 NLR 125; *Glover & Anor v Officer Administering the Government of Nigeria* (1949)19 NLR 45

Between 1900 and 1960,²³² the British colonial authority passed various other laws (otherwise known as Ordinances) aimed at securing lands for government use and private developments subject to payment of compensations. This move was necessitated by the fact that pre-colonial land tenure system was mostly based on communal and family tenure system which strongly disallow the transfer of land ownership to aliens. These Ordinances include the Native Lands Acquisition Proclamation Ordinance of 1903, the Crown Lands Management Proclamation Ordinance of 1906, as amended, the Native Acquisition Ordinance of 1917, the Niger Lands Transfer Ordinance of 1916, the Crown Land Ordinance of 1918, the Registration of Title Act of 1935, and the State Lands Act Cap 45 of 1958 which finally vested the ownership of all public lands in the state.²³³

Various other laws were also passed within the period in question at the regional levels in line with the diversity of the colonial Nigerian state, with the intention of tackling some peculiar challenges faced within these regions and protectorates.²³⁴ Apart from the various laws mentioned earlier which were introduced by the colonial authority to regulate land matters in Lagos and by extension the entire Western region of Nigeria,²³⁵ laws were also enacted to regulate land matters in the Eastern and Northern regions of Nigeria in accordance with their peculiar challenges. The Land Tenancy Law of 1935 and the Acquisition of Land by Aliens Law of 1957 were enacted for Eastern Nigeria, while in the North the Crown Lands Proclamation Ordinance of 1902 was adopted, an act through which all lands originally acquired by the Royal Niger Company²³⁶ within the protectorate of Northern Nigeria were transferred to the Colonial administration and were known as Crown Land.

²³² The British colonial authority assumed full administrative control over Nigerian territory in 1900, and Nigeria gained her independence in 1960

²³³ Kunle Aina et al, Introduction/Historical Evolution of Land Law in Nigeria. P. 8

²³⁴ There was the Eastern, the Western and the Northern protectorates in Nigeria during the colonial era.

²³⁵ These laws include the Ikoyi Ordinance of 1908; The Crown Grants (Township of Lagos) Ordinance, No. 18 of 1947; The Arotas (Crown Lands) ordinance, No19 of 1947; The Epetedo Lands Ordinance, No. 20 of 1947 and the Glover Settlement Ordinance, No.21 of 1947. Others not mentioned above are Property and Conveyancing law, Cap 100, Land Instruments Preparation Law Cap. 55, Land Instruments Registration Law Cap 56, Administration of Estates Law Cap. 2, Public Lands Acquisition Law Cap 105, Registration of Titles Law Cap. 57, Native Lands Acquisition Law Cap. 80, Recovery of Premises Law, Cap 110.

²³⁶ Prior to the assumption of direct administrative control by the British colonial authority in 1900, area later regarded as Northern Nigeria was administered by the Royal Niger Company by charter of the British Government.

Likewise, following the conquest of the Fulani Emirate which constituted the reigning authority within the then Northern axis of present day Nigeria, lands that were previously administered by the Fulani Emirs were put under the control of the colonial authority and were classified as 'Native Lands'.²³⁷ The difference between Crown Lands and Native Lands was that whereas powers and control over Crown Lands was vested in the Governor in trust for Her Majesty's government, control over Native Lands were placed on the Governor in trust for the people.²³⁸ By virtue of the provisions of the Land and Native Rights Proclamation of 1908, all lands in Northern protectorate and the power to divest same were formerly placed under the control of the colonial authority.²³⁹ This was later consolidated through the Niger Lands Ordinance of 1916.²⁴⁰ This remained the position of land administration in place in Northern Nigeria until it was later indigenised with some amendments by the Northern House of Assembly after Nigerian independence through the Land Tenure Law of 1962.²⁴¹

It must be noted that various aspects of these received English laws which were not amended or suspended by local legislations are still applicable in the administration of land matters in Nigeria particularly in areas where principles of customary property

²³⁷ Kunle Aina et al, Introduction/Historical Evolution of Land Law in Nigeria. p. 8-9.

²³⁸ Ibid

²³⁹ A committee constituted in 1908 was charged with the responsibility of helping to streamline and recommend the appropriate type of land tenure to be adopted within the Northern protectorate in line with the peculiarity of the region. The committee concluded that the whole of the land in the Northern Protectorate should be vested in the Government in trust for the natives, and that no title to the use and occupation of land was valid without the consent of the colonial government.

²⁴⁰ The aim of this Ordinance was to protect and preserve the right of the natives to the use and enjoyment of the land of the protectorate and the natural fruits thereof in sufficient quantity for the sustenance of themselves and their families. However, the real aim was to facilitate the easy dispossession of the natives from their land if and when the land was needed by the government for other purposes

²⁴¹ The Land Tenure Law of 1962 obviously re-enacted the 1916 Law with some amendments. Thus, the provision that institutes the validity of land occupation to the consent of the Governor was amended to refer to occupation by non-natives, and the power of the Governor became vested in the minister (later commissioner) responsible for land matters. The interest which an individual could have in land is a right of occupancy which could be customary or statutory. The statutory right of occupancy was one granted by the Governor while customary right of occupancy is one derived by force of customary law. See Kunle Aina et al, Introduction/Historical Evolution of Land Law in Nigeria. P. 8-10

laws do not apply subject to the degree of allowance permitted by the extant laws, particularly the provisions of the Land Use Act.²⁴²

3.6: INDIGENOUS STATUTES

There also exist in Nigeria, various local legislations or indigenous statutory provisions that are germane to the matters of property administration, and most particularly succession to the estate of the deceased. Apart from the statutory provisions covering the administration of wills in the various states of the federation which aims at protecting the rights of dependant- heirs under testacy, and whose provisions are vastly influenced by the wills Act of 1837 and other relevant received English laws, there also exist plethora of indigenous statutes that regulate the rights of property inheritance, access and administration in Nigeria. The various indigenous statutes relevant to land matters are contained within our statutory books and are examined bellow:

i. THE CONSITUTION

The 1999 constitution of the Federal Republic of Nigeria did not make elaborate provisions for the regulation of land matters in Nigeria. Though, Article 43 and 44 of the 1999 Constitution provides for the property rights of all Nigerians. Article 43 particularly stipulates that “...every citizen of Nigeria shall have the right to acquire and own immoveable property anywhere in Nigeria”, while Article 44(1) states that “No moveable property or any interest in an immoveable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by a law....”²⁴³

However, the Nigerian constitution through the catch-all provision in section 315(1)²⁴⁴ provides for the validation of the jurisdictions of some existing laws in Nigeria subject to modifications that may be necessary to bring it into conformity with the provisions of this constitution. In 315(4b),²⁴⁵ the constitution defines “existing Law” to mean “any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date”. To this effect, it

²⁴² Charles Mwalimu, *The Nigerian Legal System*, Vol. 2 Private Law (Peter Lang Publishing, 2009) p. 138

²⁴³ The 1999 Constitution of the Federal Republic of Nigeria

²⁴⁴ Ibid

²⁴⁵ Mwalimu, Charles, *The Nigerian Legal System*. p. 138

declared in section 315(5) that nothing within this constitution shall invalidate the provisions and jurisdictions of these statutorily recognised existing laws, and in sub-section (d) expressly mentioned the Land Use Act as one of the four pre-existing laws that enjoy such a constitutional immunity.²⁴⁶ It went further to assure that the provisions of these constitutionally recognised enactments shall continue to apply and remain fully effective in accordance with their tenor just like all the other provisions forming part of this constitution, and shall not be altered or repealed except in accordance with the procedures stipulated or recognised by the appropriate sections of the constitution.²⁴⁷

ii. THE LAND USE ACT OF 1978

Prior to the promulgation of the Land Use Decree, which was later renamed Land Use Act,²⁴⁸ there was lack of uniformity on the legal provisions governing land ownership and management across Nigerian states. Vast majority of the available land laws in Nigeria were based on a plethora of customary legal principles, the received English laws and other statutes either directly enacted by various Nigerian legislatures or laws that were formerly adopted by the colonial authority and later indigenised by the Nigerian legislatures after independence. These laws were initially adopted, enacted or indigenised with the intention of meeting the specific needs and challenges of either the colonial colonies and protectorates and many other separate regional administrative entities that later constitute the present-day Nigerian state. Some of these laws also reflect the diversities and the regional form of administrations that were in existence across Nigeria at the point of the enactments, namely Eastern Region, Western Region and Northern Region of Nigeria or the federating units which make up the present-day Nigerian State.²⁴⁹ For example, within the northern part of Nigeria, there existed a system of public land tenure pursuant to the colonial statutory regime. This system was retained albeit with minor changes and indigenised after the Nigerian independence in 1960.²⁵⁰ In the Southern part of Nigeria, various customary law principles holds way in

²⁴⁶ Ibid

²⁴⁷ Section 9(2) of the 1999 Constitution of the Federal Republic of Nigeria contain procedures for the amendment of any part of the constitution

²⁴⁸ The Land Use Act of 1978 Cap 202 Laws of the Federation of Nigeria 1990.

<<http://www.nigeria-law.org/Land%20Use%20Act.htm>>. Accessed 10/01/17

²⁴⁹ Nigeria is made up of 36 federating units known as “states” and the Federal Capital Territory located in Abuja

²⁵⁰ Mwalimu, Charles, *The Nigerian Legal System*. p. 138

conjunction with some of the statutory received English laws not yet repealed by the indigenous legislatures, as well as colonial and post-colonial legislations.²⁵¹

The need for an all-encompassing land law with national colouration which would harmonise the divergent land laws in existence across various ethno-tribal and linguistic divides was said to have precipitated the promulgation of the Land Use Act in 1978 by the then military government headed by General Olusegun Obasanjo. Thus, whereas other legislative provisions were regionally based, Land Use Act is general or national in nature, and its application and effects cover the entire spectrum of Nigerian state.²⁵²

Other factors that necessitated the promulgation of the Land Use Act include the challenges associated with uncontrolled land speculation mostly in the urban areas; high demand for lands occasioned by increased population and industrialisation; the constraints of unequal land rights which formed the hallmark of various customary land tenure systems across Nigerian state; and finally, the issue of fragmentation of lands within the rural areas occasioned by either the application of the customary inheritance principles and/or population growth which leads to increased demand for land.²⁵³

However, some analysts have insisted that the difficulties faced by the government in the acquisition of adequate land for public use and other developmental programmes was the major factor that prompted the promulgation of the new land law.²⁵⁴

The introduction of the Land Use Act completely redefined the rights and duties of the government, land users and all other stakeholders to land in Nigeria. By vesting all land in the governments, land users are left with only usufructuary rights and the validity or otherwise of rights of occupancy are dependent upon the consent of the government in accordance with the provision of the Act.²⁵⁵ The Act recognised both the statutory and customary rights of occupancy which were to be validated through the consent of the State and the Local Governments respectively. However, its holistic recognition of the existing customary tenurial rights without any considerations to the defects of the patrilineal de-facto rights and its discriminatory attributes clearly helps to reinforce

²⁵¹ Ibid

²⁵² Kunle Aina et al, Introduction/Historical Evolution of Land Law in Nigeria. p. 15

²⁵³ Otubu, Akintunde Kabir, 'Democratic Land Governance and the Land Use Act in Nigeria - Need for Reform'. (September 22, 2014). SSRN. P. 8.

<<https://ssrn.com/abstract=2499754>> or <<http://dx.doi.org/10.2139/ssrn.2499754>> . Accessed 14/09/2018

²⁵⁴ Otubu, Akintunde, 'Land reform and the Future of Land Use Act in Nigeria,. P. 4.

<https://www.academia.edu/1318346/LAND_REFORMS_AND_THE_FUTURE_OF_LAND_USE_ACT_IN_NIGERIA>. Accessed 15/09/2018

²⁵⁵ See part 2,3 and 4 of the Land Use Act

existing stereotypes against women who under many customs and traditions in Nigeria are denied rights of inheritance, and often constrained to the enjoyment of only secondary rights to land most of which are not secure.²⁵⁶

iii. NIGERIAN CASE LAWS

Case laws also form part of the indigenous statutes and has emerged as another important part of the legal framework governing land matters in Nigeria. Case laws emerge from legal precedents and the jurisprudence of the courts. They are already decided cases which are regarded as authorities and could be very important in the interpretation of principles and statutory provisions, as well as be referred to in the adjudication of land related matters. Judicial decisions or case laws form part of the growing sources of land laws in Nigeria as courts have been invited on various instances to give the actual interpretation of the position of the laws in relation to land administration and tenure systems.²⁵⁷

In interpreting and determining land related cases, Nigerian courts are expected to rely on the provisions of and principles inherent in any of the above-mentioned body of laws depending on the backgrounds and circumstances of the cases in question. For instance, courts are expected to rely on customary legal provisions and practices in determining matters bothering on customary lands. However, in recent time, Nigerian courts are also increasingly referring to provisions of international laws and covenants in reaching decisions on land matters, particularly on matters bothering on women's land rights and discriminatory tenurial practices.²⁵⁸ For instance, while declaring a patrilineal system of land inheritance of Nnewi people of Anambra State which denies women rights of property ownership on the ground of gender, as unconstitutional and repugnant to natural justice, equity and good conscience, Justice Niki Tobi, in reference to the Beijing Platform for Action,²⁵⁹ declared that "We need not travel all the way to Beijing to know that some of our customs, including the Nnewi "*Oli-ekpe*" custom relied upon by the appellant are not consistent with our civilized world in which we all live today".²⁶⁰

²⁵⁶ For step by step analysis of the sections of the Land Use Act, and the implications of its adoption in Nigeria, see Chapter 6 of this paper under the "Land Reform in Nigeria".

²⁵⁷ Kunle Aina et al, Introduction/Historical Evolution of Land Law in Nigeria. p. 14-15

²⁵⁸ See *Mojekwu v. Mojekwu* (1997) 7 N.W.L.R. (Pt. 512)

²⁵⁹ Beijing Platform for Action. <www.un.org/womenwatch/daw/beijing/platform/>. Accessed 15/09/2018

²⁶⁰ *Mojekwu v. Mojekwu* (1997) 7 N.W.L.R. (Pt. 512)

Meanwhile, the present Nigerian constitution mirrors the disposition of Nigerian state towards international laws and her international obligations. It contains the foreign policy of the Nigerian state which among other things include the eradication of all forms of discriminations and respect for international laws and treaty obligations.²⁶¹ However, these provisions only reflect guidelines on how Nigerian State wishes to relate to the international community, and do not by any means constitute a binding commitment to the provisions of international laws. International laws and treaties do not automatically assume the position of law in Nigeria unless it is being legislated upon and domesticated by the appropriate Legislative arms of the Nigerian government. This practice is the same in most of the commonwealth countries.²⁶² Thus, Section 12(1) of the 1999 Constitution of the Federal Republic of Nigeria states that;

No treaty between the federation [of Nigeria] and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

Some of the International Legal Instruments with explicit provisions on land management and administration, particularly on women's land and other property rights, which have been ratified by Nigerian Legislature include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),²⁶³ while others like the African Charter on Human and People's Rights (ACHPR)²⁶⁴ of 1981, and subsequently, the Protocol to the African Charter on Human and Peoples' Rights of 2003²⁶⁵ have been ratified and fully domesticated. Therefore, Nigerian courts are at liberty to rely on the provisions of these international instruments in determining land related cases.

²⁶¹ Okeke C. N, 'The Use of International Law in the Domestic Courts of Ghana and Nigeria', (2015) The Arizona Journal of International and Comparative Law, Vol. 32 No 2. P. 405

²⁶² *Ibidapo v. Lufthansa Airline* (1997) 4 NWLR 498, 124 at 150

²⁶³ Convention on the Elimination of All Forms of Discrimination Against Women (1979). <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>>. Accessed 12/09/2018

²⁶⁴ African Charter on Human and Peoples' Rights. <<http://www.achpr.org/instruments/women-protocol/>>. Accessed 12/09/2018

²⁶⁵ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. <http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf>. Accessed 12/09/2018.

3.7: Conclusion.

Looking at the variance and the multiplicity of sources of land law in Nigeria as examined so far, one may be tempted to envisage a state of confusion and clash of laws. However, this is rarely the situation as each of these legal instruments play important and specific roles in the administration, management and regulation of the divergent land tenure systems that exist in a highly heterogenous entity like Nigeria. Also, following the universal consensus on the centrality of secure, just and equitable land rights to the success of the campaign against poverty and its usefulness towards the achievement of sustainable rural development,²⁶⁶ it is expected that all these legal instruments would synergise towards the eradication of poverty, injustices and discriminations in Nigerian society by ensuring the provision of responsible land administration system and the entronement of secure and equitable land rights for all, particularly for women and other vulnerable members of the Nigerian society.

²⁶⁶ Secure Land Rights for All, UN HABITAT Global Land Tool Network 4 (2008), <[file:///C:/Users/USER/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/Secure%20Land%20Rights%20for%20All%20\(1\).pdf](file:///C:/Users/USER/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/Secure%20Land%20Rights%20for%20All%20(1).pdf)>. Accessed 10/08/2018

CHAPTER 4: DISCRIMINATORY TENURIAL RIGHTS, INTESTACY AND JUDICIAL ACTIVISM IN NIGERIA

4.1: INTRODUCTION

One remarkable attribute of property rights is its enduring nature which transcends the lifetime of the rights owner. Thus, the death of the property owner does not by any means extinguish the deceased's bundle of rights over the property.²⁶⁷ Rather, at the demise of a property owner intestate, the rights and obligations over such property devolve on the heirs or successors in accordance to the appropriate personal law of the deceased.²⁶⁸ The most common way of property acquisition in Nigeria remains through inheritance, while plethora of laws of succession and inheritance in Nigeria clearly reflect the pluralistic nature of Nigerian legal system.²⁶⁹

However, most customary rights of property inheritance in Nigeria, particular the Igbo system of property inheritance as exemplified by *Mojekwu v. Mojekwu*,²⁷⁰ have been criticised for containing various degrees of discriminatory attributes that accommodate unequal property devolution among members of the families and the society.²⁷¹

Examples of these discriminatory tenurial practices, the manifestations within the major three ethnic groups in Nigeria and their implications to the survival, livelihoods, emancipation of the poor and vulnerable members of the society, and their overall effects on developments the sustainability forms the centre piece of this chapter.

4.2: EVALUATION OF THE MAIN ISSUES AND NOTIONS OF INTESTACY IN NIGERIA

The standard pattern of customary rights of inheritance in most part of Nigeria is generally patrilineal. Patrilineal inheritance is a customary pattern of inheritance which traces rights of property inheritance through fathers (male) and their bloodline.²⁷² The concept of patrilineal system of inheritance is premised on the belief that land is a priceless economic commodity which must be preserved for the benefit of descendants

²⁶⁷ Smith, I. O, *Practical Approach to Law of Real Property in Nigeria*. P. 555

²⁶⁸ In Nigerian case, personal law is either law of the *propositus* or Islamic law. See *Tapa v. Kuka* (1945) 18 NLR 5.

²⁶⁹ Ibid.

²⁷⁰ (2004) 4 S.C. (Pt. 11)

²⁷¹ Onuoha, R. A, 'Discriminatory Property Inheritance under Customary Law in Nigeria: NGOs to the Rescue'. The International Journal of Not-for-profit Law, Volume 10, Issue 2, April 2008. <www.icnl.org/research/journal/vol10iss2/art_4.htm>. Accessed 20/09/2015

²⁷² Emeasoba, U. R.B. 'Land Ownership among the Igbos of South East Nigeria. P. 99

of a bloodline, thus the assertion that “land belongs to a vast family of which many are dead, few are living and countless members are still unborn”.²⁷³ Therefore, women being considered of external bloodline (especially in exogamous marriages) are excluded from inheriting family properties. The argument being that allowing married women to inherit from family property has the tendency of causing rift and loss of family assets to external bloodlines because women would transfer inherited family assets from a particular family to another external lineage upon remarriage either as a result of the death of their spouses or dissolution of marriages. In the same vein, fathers do not bequeath lands to their daughters on the account that they themselves will one day get married into a different clan or bloodline, and will presumably take the property along with them, resulting in the loss of family assets to external families or clans. Girls ordinarily are expected to enjoy access to their husbands’ property or that of their husbands’ families when they get married.²⁷⁴ It has equally been argued that the practice of primogeniture²⁷⁵ has the capability of providing the much-needed solution to the problem of land fragmentation in customary tenure which has militated against large scale agriculture, agricultural mechanization and the consequent economic prosperity.²⁷⁶

Patrilineal system of inheritance manifests either in form of “primogeniture” or “ultimogeniture”. Primogeniture is a patriarchal customary rule that accords the right of property inheritance on the first son of the family to the exclusion of other descendants. In most cases, the first son is expected to inherit not only the deceased properties, but also the liabilities, duties and core responsibility of taking care of all the other members of the family left behind by the deceased.²⁷⁷ This arrangement is known as “inheritance with the best interest of dependants” and is believed to be in accord with the native idea of the eldest son being “the father of the family” at the absence of their original father,²⁷⁸ with legal obligation towards the welfare and maintenance of the other

²⁷³ Makar T, *The History of Political Change among the Tiv in the 19th and 20th Centuries*. (Dimension Publishing Ltd, Enugu, 1994) p. 36- 37

²⁷⁴ Ibid. p. 100

²⁷⁵ Primogeniture is a form of tenurial rights or customary practice that accords the legitimate first son the right to inherit his parent’s entire or main estate to the exclusion of daughters, younger sons, illegitimate children and collateral relatives. This privilege however comes with the responsibility of taking care of all relatives that were hitherto under the care of the deceased. This is known as “inheritance with responsibility principle”.

²⁷⁶ Oluyede Peter, *Modern Nigerian Land Law*. Evans Brothers (Nig. Publishers, 1989) p. 157

²⁷⁷ Epiphany Azing et al, *Restatement of Customary law of Nigeria*, P. 108

²⁷⁸ See *Ehigie v. Ehigie* (1961) NMLR 307 at 309

descendants.²⁷⁹ It is in the light of this position that the law bars the eldest son from selling the estate upon devolution.²⁸⁰

This form of inheritance is mostly practiced among the Igbo people of the Eastern Nigeria which comprises Anambra, Imo, Abia, Ebonyi and Enugu states. The rule of primogeniture is also observed among the Nupe people and few other tribes within Nigeria though with slight variations in some areas. For example among the Bini and Ishan people of Edo state, Urhobo, Itsekiri and Anioma people of Delta state; all in the present day South-South geopolitical zone of Nigeria, the first son's absolute right to inherit their deceased father's property to the exclusion of other descendants is restricted to the house of abode of the father before his demise, otherwise known as Igiogbe.²⁸¹ In the case of the Bini and Ishan people in particular, there exist some conditionalities subject to which the first son can inherit the Igiogbe. The customary rule in these areas stipulate that upon the death of a father, the eldest son takes over his estates as a trustee on behalf of other descendants. He is to hold the entire estate in trust pending the performance of the second (final) burial rites. At the fulfilment of the final burial right, the first son automatically inherits the house where the father lived, died and was buried (Igiogbe).²⁸² However, any first son born outside the customary marriage arrangement possesses no right of absolutism over the Igiogbe under intestate. Rather, the next male child born under customary wedlock, known as "Omodion" is called upon to inherit the Igiogbe and step into the shoes of their deceased father.²⁸³

On the other hand, ultimogeniture which is a system of inheritance that allows for the inheritance of property by the youngest son to the exclusion of other descendants is a practice popular among the Marki people of Verre.²⁸⁴ There equally exist in some communities among the Igbo people, an admixture of matrilineal and ultimogeniture pattern of inheritance- as could be found within Umunze²⁸⁵ and its environs. In these areas, the right to inherit the personal property of a deceased mother, especially her

²⁷⁹ Obi, S. N. C, *Modern Family Law in southern Nigeria* (1966) p. 337

²⁸⁰ *Usiobaifo v. Usiobaifo* (2001) FWLR (pt. 61) 1784

²⁸¹ Ibid.

²⁸² See *Arase v. Arase* (1981) SC 35, 62; *Agidigbi v. Agidigbi* (1992) 2 NWLR (pt. 221) 98; *Ogiamen v. Ogiamen* (1967) NMLR 245, 247;

²⁸³ Okojie C. G, *Ishan Native Laws and Custom* (John Okwesa & Co. Yaba, 1960) p. 90.

²⁸⁴ The Marki community of Verre could be found in Furore local Government Area of the present Adamawa State in North-Eastern Nigeria.

²⁸⁵ Umunze (literarily translates as the descendants of Nze) is the headquarters of Orumba-South Local Government Area of Anambra State, in Eastern Nigeria.

dwelling huts/housing, land surrounding the huts, and every other personal acquisitions of the deceased mother, resides with her last son to the exclusion of other descendants. Though, some personal belongings like clothes and jewelleries are often left for the female descendants who would ordinarily have needs for them. However, there is now a drastic decline on the youngest sons' right of absolutism in the inheritance of deceased mothers' personal huts or houses as practiced among some Igbo communities. This is as a result of the modern trend of co-habitation of husband and wife, as against the age long Igbo traditional practice of separate houses or huts for spouses.²⁸⁶

Finally, there were, and still exist, a very few cases of matrilineal system of inheritance in Nigeria.²⁸⁷ Matrilinealism is a customary system of inheritance in which property inheritance is traced through mothers and their blood relatives. This is still in operation in few communities within the present Ebonyi and Abia States of Eastern Nigeria. Nonetheless, it is worth noting that there is no visible indication that Matrilinealism has brought about improved economic security for women and general societal prosperity among its practitioners. According to the UN Global Multidimensional Poverty Index Interactive Databank 2015, the poverty index of Ebony state where there is visible traces of matrilineal property ownership pattern stood at 56.0%,²⁸⁸ 10% above the national poverty index average of 46%, making Ebony the only state outside the Northern geopolitical region of Nigeria with such a high level of destitution.²⁸⁹ The poverty index for Enugu state is 28.8%, Abia state is 21.0%, Imo state has 19.8% while Anambra state poverty index stood at 11.2%;²⁹⁰ thus making Anambra state the best among the five federating states that made up the Eastern geopolitical zone, constituting the region under review. See the 2017 Oxford Poverty Development Initiative in Fig. ii below for the graphical analysis and clearer understanding of sub-national poverty rates across Nigerian Federating States and the Federal Capital Territory Abuja.

Subsequent analysis on this subject matter will be focused in greater details on the dynamics and peculiarities of the different forms of property inheritance operational particularly across the three major ethnic groups in Nigeria (i.e. Yoruba, Hausa/Fulani

²⁸⁶ Emeasoba, U. R.B. 'Land Ownership among the Igbos of South East Nigeria. P. 103

²⁸⁷ Elias, T. O, *Nigeria Land Law* (4th edn. London Sweet and Maxwell, 1981), p. 179

²⁸⁸ The Oxford Poverty and Human Development Initiative; 'Global Multidimensional Poverty Index Database', (2015) OPHI, University of Oxford.

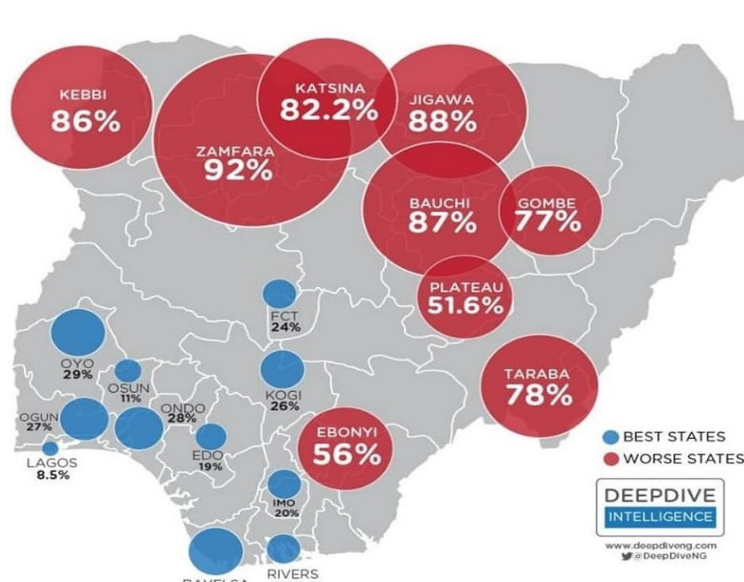
<<http://www.ophi.org.uk/wp-content/uploads/multidimensional-poverty-index-2015-2-march-2015.pdf?0a8fd7&13666f>>. Accessed 15/09/2015

²⁸⁹ Ibid

²⁹⁰ Ibid

and the Igbo), as well as the extent to which each of these inheritance patterns conform to the provisions of the extant laws of the land, align with the international best practices, respect the fundamental human rights of Nigerians, and most importantly, safeguard the security of tenure of women and other vulnerable members of the Nigerian society.

Fig. ii: SUBNATIONAL POVERTY RATES IN NIGERIA.



Source: (Oxford Poverty Development Initiative 2017).

4.3: THE YORUBA SYSTEM OF INHERITANCE

The contemporary Yoruba customary rule of inheritance appears to offer the most liberal and accommodating inheritance pattern among the groups under review as rights of inheritance devolves on all the descendants of the deceased in equal proportion irrespective of their status, age or gender.²⁹¹ The flavour of impartiality and equality evident in Yoruba customary rights of inheritance is most appreciated in polygamous settings where squabbles and rancour are often common features. Even minors and illegitimate children are not exempted from this principle of equality and impartiality that characterise the Yoruba customary rights of inheritance.²⁹² This is done on the advice and supervision of the family head who is seen as a *primus inter pares* or by the family council.²⁹³ Though the family head may be seen as the first among equals, his interest in the family property is not greater than that of the other members of the

²⁹¹ See *Lewis v. Bankole* (1909) 1 N.L.R. 82; T. O. Elias, T. O, *Nigerian Land Law* (London: Sweet & Maxwell, 1981) p. 118-120

²⁹² See *Sute & Ors v. Ajisegiri* (1937)13 NLR. 147

²⁹³ Elias, T. O, *Nigerian Land Law*. p. 119 and 559

family, and his fiduciary position entails that he cannot effectively alienate any part of the family property without the consent of the family members.²⁹⁴ Unlike the Igbo customary right of inheritance where, as we will see later in this chapter, “headship” is predicated on gender, the first child assumes the position of the family head irrespective of the gender,²⁹⁵ and is entitled to exercise right of first choice during the devolution of their deceased father’s estate.²⁹⁶ This remains the acceptable position of the customary practice among the Yoruba people, the gender of the first child notwithstanding.²⁹⁷ Though, in situations where the first child is a woman, and some unavoidable exigencies made it practically difficult if not impossible for her to live within the family household in order to effectively administer her late father’s estate (for example marriage into another family either outside their immediate community, tribe or nation), it is always most appropriate and convenient for the first male child to succeed the deceased father as the head of the family. This however is subject to mutual agreement between the parties,²⁹⁸ and does not by any means strip the first daughter of her right of first choice over the deceased other properties.²⁹⁹ The legitimacy of the above mutual arrangement is predicated on strict adherence to the principles of free, prior and informed consent of the parties.

Though, at certain point in history, the revered equitable balance in Yoruba customary right of property inheritance was challenged and threatened by some discriminatory and unpopular decisions by various courts in Nigeria. The position expounded in those court rulings which actually centred on matters of accountability of stewardship from the head of the family as a trustee to the family property was a sharp deviation from the standard Yoruba customary tenets as the courts in those cases tried to legitimize disparities in property rights of inheritance based on gender considerations; a concept alien to Yoruba customary legal provision.³⁰⁰ For example, in *Re Hotonu* (deceased 1892),³⁰¹ the eldest brother of the deceased succeeded to the entire property of the deceased to the exclusion of even the surviving wife of the deceased. Efforts made towards compelling him to

²⁹⁴ Ibid.. P. 65

²⁹⁵ See *Taiwo v. Sarwni* (1913) 2 NLR 106

²⁹⁶ *Ricardo v. Abal* (1926) 7 NLR. 58

²⁹⁷ Ibid.

²⁹⁸ Per Tew J. Ibid at p. 59

²⁹⁹ Ibid.

³⁰⁰ *Lopez v. Lopez* (1937) 13 N.L.R. 146.

³⁰¹ At p. 18 of Lagos: Reports of Certain judgements of the Supreme Court, etc (1884-1992)- Law Reports (Colonial). Nigeria A. Colonial Office Library, London. (As quoted in Elias, T. O, *Nigerian Land Law*, p. 72-73.

account for the property so received proved abortive.³⁰² Similar thing was also recorded in *Omoniregun v. Sadatu*,³⁰³ where the eldest son succeeded to the land in place of his deceased father to the exclusion of other descendants and used the property for his benefit and that of his personal family alone. This unfortunate deviation from the standard Yoruba customary principle of equitable property rights and accountability was believed to have been inspired by similar developments in neighbouring state of Ghana where the courts had on several occasions exonerated family heads from being accountable to other members of the family in relation to family property.³⁰⁴ It must be noted that some parts of the neighbouring Ghanaian nation who were believed to have migrated from Nigeria share similar cultural, linguistic and administrative heritages with the Yoruba people of Nigeria.³⁰⁵ Viewing this from the perspective of “contagious theory” which posits that the occurrence of a particular incident within a given country has the capability of stimulating its replication in the neighbouring states,³⁰⁶ it becomes understandable why some family heads among the Yoruba people of Nigeria could attempt to replicate what their counterparts in Ghana enjoys. However, these incidences described above which at various points attempted to undermine the Yoruba tradition of equitable property rights were only exceptions and never the general rule and was eventually rejected in the case of *Sule & Ors v. Ajisegiri*.³⁰⁷

In situations where the deceased married more than one wife and left behind descendants from different women, the applicable customary practice is to share the deceased property among the descendants either per Stirpes (*Idi-Igi*) or per capita (*Ori-Ojori*). Per stirpes pattern of inheritance allows for the eldest child of each family sub-unit of the expanded polygamous family to be entrusted with their share of the property

³⁰² Ibid.

³⁰³ Ibid., at p. 15

³⁰⁴ See *Villars v. Baffoe* (1909) Ren. 549; *Abude v. Onanor* (1946) 12 WACA. 102

³⁰⁵ Ofori Akyea, “Ewe”, *Heritage Library of African Peoples West Africa* (Rosen Pub Group; 1st edn. September 1, 1997). Also see Canada: Immigration and Refugee Board of Canada, Ghana: Ewe ethnic group: traditional location; language spoken; traditions and rituals; the process for selecting leaders; whether leadership titles are hereditary; consequences for the refusal of a leadership title and availability of state protection for those who refuse such a title. 17 September 2002. GhA39964E, available at <http://www.refworld.org/docid/3f7d4d99e.html> [accessed 13 November 2016]

³⁰⁶ The concept of “contagious theory” has been used to explain one of the major reasons why several coup d’états took place almost at the same time in several neighbouring states of Africa. See Wells, Alan, ‘Coup D’Etat in Theory and Practice: Independent Black Africa in the 1960s’, (1974) *American Journal of Sociology*, 79 (4) 871-887

³⁰⁷ (1936) 13 N.L.R. 96

for onward redistribution per head. Where there is disagreement among the members of a family unit, per capita which allows for distribution of the estate per head will be adopted.³⁰⁸ Grand children also succeed only to that right as their immediate parents had in the family estate.³⁰⁹

A mother can succeed to her deceased child's property if the deceased died without a child. Where both parents are alive, the property would be shared by the parents equally. Though, fathers naturally allow mothers to inherit. But where the deceased had brothers and sisters of the same mother, they inherit the property in equal proportion. Half brothers and sisters are not entitled to inherit in such a situation.³¹⁰ Grandparents are also entitled to inherit the property of their grandchildren in cases where the parents are dead.³¹¹ Parents cannot inherit from their deceased children's property where such a property, though allotted to the deceased, is still part of the undivided share of the family.³¹² This is in line with the provision that a deceased person's property under customary law devolves upon his descendants as family property pending its devolution.³¹³ Deceased relatives have no rights of inheritance in the deceased property under Yoruba law and custom,³¹⁴ this is a direct contrast to what is obtainable among the Igbos of Eastern Nigeria; a case which this chapter will examine in full details later. Spousal rights of property inheritance are completely absent in customary law provisions.³¹⁵ This is a common feature to all the customary patterns of inheritance in Nigeria. Husbands and wives cannot inherit from each other's property as they are considered to be from separate family backgrounds and bloodline.³¹⁶

4.4: THE HAUSA/FULANI SYSTEM OF INHERITANCE

The Hausa/Fulani system of property inheritance is generally governed by the provisions of the Islamic or Sharia legal principles as enshrined in the Holy Quran and

³⁰⁸ See *Vincent v. Vincent* (2008) 11 NWLR (pt. 1097) p. 35-49

³⁰⁹ *Danmole v. Dawodu* (1958) 3 F.S.C. 46; (1962) 1 W.L.R. 1053

³¹⁰ *Adedoyin v. Simeon & Ors* (1928) 9 N.L.R. 76, *Taiwo v. Taiwo* (1958) 3 F.S.C. 80

³¹¹ *Bolajoko & Ors v. Layeni* (1950) 19 N.L.R. 99

³¹² *George & Anor. V Fajore* (1939) 15 N.L.R. 1

³¹³ See *Ogunmefun v. Ogunmefun* (1931) 10 N.L.R. 82

³¹⁴ *Adeseye v. Taiwo* (1956) 1 F.S.C. 84

³¹⁵ *Nwugege v. Adigwe* (1934) 11 NLR 134; *Oke & anor v. Oke & anor* (1974) All NLR 401

³¹⁶ *Caulcrick v. Harding* (1929) 7 N.L.R. 1; *Nezianya v. Okagbue & Ors* (1963) 1 All N.L.R. 352

explained by the Sunnah of Prophet Mohammed.³¹⁷ Meanwhile, it would be worthwhile to clarify two important issues at this juncture;

Firstly, it must be noted that though Northern Nigeria is vastly inhabited by Hausa/Fulani tribes who are predominantly Muslims, this does not by any means suggest that they are the only inhabitants in that region. Northern Nigeria is a multi-ethnic and multi-religious region of Nigeria comprising over a hundred ethnic groups.³¹⁸ Thus, Muslims, Christians and adherents of multiplicity of African traditional beliefs otherwise known as “Maguzawa”³¹⁹ exist side by side each other. Land matters among the Maguzawans in particular are governed by the customs and traditions of each of the ethnic groups with slight variations in details and modus-operandi. However, the central principles remain the same; only male descendants enjoy rights to property inheritance, and in the absence of male descendants or relations to inherit a deceased person’s properties, such properties automatically revert back to the community.³²⁰ Just like their counterparts in Eastern Nigeria, women in Maguzawa communities enjoy only usufructuary rights as inheritance is based on patrilineal provisions. Though exception exists among the Ham tribe,³²¹ as female descendants or relations are allowed to inherit properties in the absence of surviving male relations.

More so, under Maguzawa custom and traditions, a divorced woman is expected to return her bride price back to her husband’s family, lose all matrimonial entitlements

³¹⁷ Sunnah of Prophet Mohammed means the teachings, deeds, permissions and disapprovals of the Islamic prophet Mohammed, as well as the reports of his companions.

³¹⁸ Abdullah J. Hussaina and Hamza Ibrahim, ‘women and Land in Northern Nigeria: The Need for Independent Ownership Rights’. In L. Muthoni Wanyeki (ed), *Women and Land in Africa: culture, religion and Realising Women’s Rights*. (Zed Books Ltd, 2003) p. 135-136

³¹⁹ The term “Maguzawa” originated from the Arabic word majus which is used to describe non-Muslims living peacefully under the protection of Muslim states. In this case, maguzawa refers to non-Muslim Hausa people who inhabit various small community villages within the Muslim Hausa states and emirates of Bauchi, Daura, Jigawa, kano, Kaduna, Sokoto and Zaria. See Abdullah J. Hussaina and Hamza Ibrahim, ‘women and Land in Northern Nigeria: The Need for Independent Ownership Rights’. p. 137

³²⁰ Ibid., 158

³²¹ Ham ethnic group are also known as Jaba people. Jaba people inhabit the Jaba Local Government Area (LGA) of the present-day Kaduna state. Jaba people are not confined to Jaba LGA alone as they can also be found in Kachai LGA, Jema’ah LGA and Kargako LGA; all of which share common boundaries with Jaba LGA. There are also Ham villages like Akaleku Sidi, Ayaragu, Masaka, Gitata and Panda in present day Nasarawa state of Nigeria. See the Ham People of Southern Kaduna: the enlightened ones. <www.theechoesofhope.com>. Accessed 19/05/2016

(including land and the matrimonial home), while her children are expected to lose all rights to inherit from their father's estates.³²² Divorced women under Maguzawa tradition enjoy rights over their personal acquisitions. The position of widows on the other hand is dependent on their fertility and their readiness to remarry. A menopausal Maguzawa widow with children who decides not to remarry will vicariously enjoy rights of abode in her deceased husband's home, as well as usufructuary rights over their land. A pre-menopausal widow is usually expected to get married to one of the deceased husband's family members. If she married within the family, she will continue to exercise rights over her home and allotted farmlands. However, if she chooses to marry outside the husband's family circle, she will lose all her entitlements to her home and land.³²³ Widows without children are expected to return back to their ancestral homes and lose all rights over the deceased husband's estate, irrespective of how long she must have been married or whatsoever contributions or roles she may have played in the acquisition and development of the deceased husband's estates. Though the husband's relations may, out of discretion and goodwill, allow such a widow usufructuary right over her deceased husband's estate.³²⁴

Secondly, it is worthy to note that full exploration of the broad range of prevailing Islamic-inheritance processes and rights as practiced in some parts of Nigeria and indeed in many other Islamic societies all over the world is outside the scope of this research. This is owing to the fact that Nigerian courts have pronounced that Islamic law is distinct from customary law as it does not belong to any particular tribe. It is a complete system of universal law.³²⁵ More so, Islamic rules of engagement are not operational in the eastern part of Nigeria; the region under investigation. However, a brief look into the provisions of Islamic law of inheritance as practiced in many parts of Nigeria, particularly within Northern Nigeria, would help in presenting a better understanding of the composition, dynamics, distinctiveness, definitive elements and processes of land acquisition by the Hausa/Fulani tribe and the present-day Nigerian legal system. In a comparative manner, it also helps in revealing the discrepancies that characterise property inheritance rights, property ownership patterns and its administration in various regions of the present-day Nigerian society.

³²² Abdullah J. Hussaina and Hamza Ibrahim, 'women and Land in Northern Nigeria: The Need for Independent Ownership Rights' p. 159

³²³ Ibid., 160

³²⁴ Ibid.

³²⁵ *Alkamawa v. Bello* (1998) 6 SCNJ 127 at p. 128

The Holy Quran stipulates which of the deceased person's relatives that is entitled to inherit, as well as the quantum of share entitlements due for each of the heirs. The Islamic legal principle of inheritance accords women quantum of rights of property inheritance in various capacities as daughters, sisters, mothers, wives and grandmothers. Thus, there exist six channels through which Hausa/Fulani Muslim women can inherit land in accordance with the Islamic injunction. These are:

Firstly, a woman as a mother has a right to inherit from a share of her offspring's land. Secondly, a woman as a wife is eligible to a share of her deceased husband's land. Thirdly, women were eligible for inheritance of their deceased parents' and other maternal and paternal relations' land. Fourthly, women also inherit from their siblings. Fifthly, women who own male or female slaves had the right to inherit their property, including land. The sixth source can be divided into two; gift and purchase.³²⁶

The grand rule is that both male and female heirs must have a share out of the properties left behind by their deceased relatives or family members irrespective of how big or small the properties might be.³²⁷ The Quran did not particularly stipulate the exact share of the male heirs. Rather, it declared that male heirs should be entitled to twice that of female heirs.³²⁸ The above is an established Islamic inheritance principle and must be understood to apply to male and female heirs of equal degree and class. For instance, sons inherit twice as much as daughters, full brothers inherit twice as much as full sisters, and same goes for grandsons and grand- daughters, fathers and mothers, and so on. This principle, however, has some exceptions as uterine brothers and sisters inherit equally in certain circumstances.³²⁹

The Islamic inheritance legal provision therefore grants women multiple channels of inheritance rights, as women can inherit as wives, mothers, grandmothers, daughters, grand-daughters, as well as germane or full consanguine and uterine sisters. However, the rights of inheritance so granted are discriminatory and gender biased. The established Islamic principle which allows men to inherit twice the share of women cannot stand as an epitome of equality and justice in modern day societies. Though the provisions when looked at against the backdrops of absolute denial of inheritance rights

³²⁶ Abdullah J. Hussaina and Hamza Ibrahim, 'women and Land in Northern Nigeria: The Need for Independent Ownership Rights'. P. 157

³²⁷ An-Nisa 4 :8

³²⁸ An-Nisa 4 :12

³²⁹ An-Nisa 4 :13

as provided for by various African customary law principles, and particularly the customary law practices observed by the Igbos of Eastern Nigeria, appears far more accommodating and promising for women emancipation. In spite of this provision, it is unfortunate to note that women in North-Eastern and North-Western geopolitical zones of Nigeria own only 4% and 4.7% of the land respectively.³³⁰

Maguzawa women, are also denied rights of property inheritance. They enjoy usufructuary rights, and such secondary rights in many instances are subject to the woman's fertility, approved behaviours and the goodwill of her husband's relatives. In addition, women are equally denied the right of property inheritance in some communities around Yola, the capital of the present-day Adamawa state, not even by death-bed wills.³³¹ Same thing is obtainable in Maigamo³³² and Kamurun Ikulu³³³ both in Kaduna state located in Northern Nigeria.

Beyond the gendered attributes of the Islamic inheritance principles, there also exist controversies arising from imbalances inherent in the mathematical permutations of some of the percentage shares made provision for in the Quran. One of such controversies arises in situations where a deceased woman is survived by her husband and both parents. If the husband inherits one-half (1/2) of her net estate and the mother takes one-third of the remaining net estate as stipulated by the Holy Quran,³³⁴ that leaves the father with only one-sixth (1/6) of the total net estate; a position that contradicts the Quranic mandate that grants male twice the share of female heirs. This mathematical imbalance has the capability of causing frictions among deceased relatives or heirs if not carefully handled.

The Islamic practice of purdah which curtails young women's movements outside their immediate environment often hinders the full and practical enjoyment of the property rights accorded to them by the Holy Quran. Of what use is a bare right to land when some gendered religious cum customary restrictions prevent the very rights owners from venturing out of their immediate domain and making judicious use of their

³³⁰ Gender in Nigeria Report 2012, "Improving the Lives of Girls and women in Nigeria" P. 20

³³¹ Smith, I. O, *Practical Approach to Law of Real Property in Nigeria*. P. 560

³³² Georgia Taylor et al., "Economic Opportunities and Obstacles for women and girls in Northern Nigeria", DFID Report, January 2014. P. 47

³³³ Abdullah J. Hussaina and Hamza Ibrahim, 'women and Land in Northern Nigeria: The Need for Independent Ownership Rights'. p. 160

³³⁴ An-Nisa 4:13

inheritance. The practice of purdah in Northern Nigeria could be seen as a form of exclusion which has resulted in further impoverishment of the poor rural women.³³⁵

In all, Islamic legal code provides a coherent bundle of inheritance rights for men and women alike though in an unequal proportion. These well-established provisions allow for predictable and futuristic planning on the side of the heirs, accords women at least quasi-security of tenure which if fully harnessed would help in strengthening the chances of women's survival and emancipation within the society.

4.5: THE IGBO OR IBO SYSTEM OF INHERITANCE

Igbo customary right of inheritance appears to be the most discriminatory, controversial and contested among all the ethnic groups in Nigeria. The prevailing customary inheritance pattern practiced by the Igbo ethnic group is patrilineal system of inheritance. This system of inheritance either manifests in the form of primogeniture or ultimogeniture.³³⁶ There still exist few cases of matrilineal inheritance in some Igbo communities; like among the inhabitants of Edda, Unwanna, Amaseri, Okpoha and Enna clans in Afikpo in the present Ebonyi state, and the Ohafia and Bende in the present Abia state of Eastern Nigeria.³³⁷ However, patrilineal practice is more popular and prevalent across the length and breadth of the Igbo ethnic group. The dominance of this customary inheritance pattern is partly because of the absence of applicable statutory legal provisions that regulate property devolution under intestacy in the region. Although, recent developments reveal that some of the states in the Igbo speaking Eastern Nigeria have enacted laws to regulate inheritance processes within their domain. Ebonyi, Enugu and Anambra States now have statutory provisions for property devolution. However, some of these newly promulgated statutory provisions still contain some discriminatory elements against women. A clear example is the Anambra State's Succession Law Edict of 1987 which provides that in situations where an "intestate leaves a husband or a wife but no children, parent or brother or sisters of the whole blood, the residuary estate shall be held in trust for the surviving spouse absolutely. However, where the surviving spouse is the wife and the intestate leaves brother or sisters of the half blood, the wife's interest will be for life or until she re-

³³⁵ Hauwa'u Evelyn Yusuf, 'Purdah: A Religious practice or an Instrument of Exclusion, Seclusion and Isolation of Women in a Typical Islamic Setting of Northern Nigeria'. (2014) American Journal of Contemporary Research, Vol. 4, No. 1

³³⁶ See chapter 4.2 for full analysis of primogeniture and ultimogeniture inheritance system.

³³⁷ Elias, T. O, *Nigeria Land Law*. p. 197

marries whichever first occurs. Thereafter, the residue of her interest shall go to the intestate's brothers and sisters in equal shares".³³⁸ This provision is yet to find full expression in a practical form as female children still remain disinherited generally in Igbo land.³³⁹

The above statutory provision is not much different from the Igbo customary rule which is in operation within the landscapes of Igbo patrilineal communities. The primogeniture rule of inheritance places the right of property inheritance wholly on the first son who is known as "Okpara" or "Diokpara" in some dialects. This has in modern time been construed to mean that he is holding the property on trust for the inheritable members of the family.³⁴⁰ In polygamous families, right of inheritance resides with the committee of first sons. Though, the eldest son inherits as of right the house dwelled by their father before his demise known as "obi", and also a distinct parcel of land of his choice known as "isi obi or ala obi".³⁴¹ Therefore, the eldest son is entitled to the largest share of the deceased estate while the other sons of the rest family units divide the remaining in diminishing proportions.³⁴²

It should be noted that the customary practice of primogeniture was in *Ogiamen v. Ogiamen*³⁴³ declared repugnant to natural justice, equity and good conscience by the court of first instance.³⁴⁴ Primogeniture apologists have argued that the practice has the potential of curbing the problem of fragmentation in land tenure which has hindered agricultural mechanization and advancement in Nigeria.³⁴⁵ A reversed, more liberal and accommodating version of patrilineal customary rule of inheritance could be found among the Delta-Igbo people of Asaba, where unmarried women though do not actually enjoy rights of inheritance, but enjoy right of being maintained by whosoever that inherited their fathers' property till they either get married, become independent financially or die, whichever comes first.³⁴⁶ In this situation, an unmarried woman can

³³⁸ See the Succession Law Edict, 1987 of Anambra State, as amended.

³³⁹ *Ejiamike v. Ejiamike* (1972) ESLR 11; *Nezianya v. Nezianya* (1963) 1 All N.L.R 352

³⁴⁰ See *Arase v. Arase* (1981) SC 37, 62; *Idehen v. Idehen* (1991) 6 NWLR (pt. 198) 382.

³⁴¹ Obi, S. N. C, *The Ibo Law of Property* (London: Butterworth, 1963)

³⁴² Smith, I. O, *Practical Approach to Law of Real Property in Nigeria*. P. 560

³⁴³ (1967) NMLR (pt. 37) 245

³⁴⁴ Ibid

³⁴⁵ Oluyede Peter, *Modern Nigerian Land Law* (Evans Bros., 1989) 157

³⁴⁶ Obi, S. N. C, *The Ibo Law of Property* (London: Butterworth, 1963). P. 150-151

enjoy the right to farm on any of the family farmlands pending the occurrence of any of the situations mentioned above.³⁴⁷

Where there is no son, the ownership right goes to the eldest brother of the deceased,³⁴⁸ this remains the general rule irrespective of whether the deceased is survived by female children or not.³⁴⁹ The eldest son or eldest sons in cases of polygamy are ordinarily entitled to the largest share of the property while the rest of the male siblings share the rest in diminishing proportion.³⁵⁰ In some other cases, first son(s) are expected to hold the land on trust on behalf of himself and his younger male siblings.³⁵¹ The idea behind entrusting the family property onto the care of the first son(s) is premised on the Igbo tradition and custom which vests the responsibility of piloting the affairs of the family and caring of the younger siblings on the first son(s) after the death of the father of the house.³⁵²

Wives do not have rights to inherit from their deceased husbands' estates under the Igbo custom and tradition.³⁵³ They are even considered as part of chattels to be inherited at the demise of their husbands. Where there is no son, or in a situation where a widow is rejected by her son, the eldest living brother of the deceased is expected to inherit her.³⁵⁴ This is what gave room for the repugnant customary practice of widow inheritance. The fate of younger male descendants also depends on the mercies of the first son(s) who more often than none cash in on this lacuna and convert the family property to personal use. A widow is only allowed to hold property on trust for her minor male children only as a way of safeguarding their rights of inheritance pending their maturity. Her contributions towards the acquisition, development or improvement of the property are immaterial as that cannot divest the property of its original character.³⁵⁵ The consequence of this is that widows lose not only their contributions towards the

³⁴⁷ Ibid.

³⁴⁸ Harvey, B. W, *The Law and Practice of Nigerian Wills, Probate and Succession* (London: Sweet and Maxwell, 1968) p. 180

³⁴⁹ *Uboma v Ibeneme* (1967), E.N.L.R. 251

³⁵⁰ Chubb, L. T, *Ibo Land Tenure* (Ibadan University Press, 1961) 40,

³⁵¹ Nwogugu, E. I, 'Family Law', in C. O. Okonkwo (ed), *Introduction to Nigerian Law*:. (London: Sweet and Maxwell, 1980) p. 303, see *Nwugege v. Adigwe & Ors.* (1934) 11 N.L.R. 134

³⁵² Obi, S. N. C, *The Modern Family Law in southern Nigeria* (London: Sweet and Maxwell, 1966) 337

³⁵³ *Nezianya v. Okagbue & Ors* (1963) 1 All N.L.R 332

³⁵⁴ *Akinnubi v. Akinnubi* (1997) 2. N.W.L.R. 144 (S.C)

³⁵⁵ *Nezianya v. Okagbue & Ors* (1963) 1 A.N.L.R. also see *Rabiu v. Absi* (1996) 7 N.W.L.R (pt. 462) 505 S.C (69-70)

acquisition and development of the property but also jointly owned and acquired property. However, few dissenting opinions among these rulings have called for urgent reform with regard to this customary practice, pointing out the dangers inherent in such outright denial and non-recognition of a woman's contribution towards the acquisition and development of her husband estate. In *Loye v. Loye*,³⁵⁶ attention was drawn to the prevailing socio-economic relationships that exist between husbands and wives in modern societies. Thus, the court pointed out that;

...(though) a woman has no right of inheritance to the estate of her deceased husband. However, this aspect of our customary law needs urgent reform because it is capable of working great hardship in modern times when wives make significant contributions to the wealth and properties of their husbands....this principle of our customary law should be reformed so that "a widow" or "widower" on grounds of marriage or marital ties could claim a share in the estate of the deceased spouse.³⁵⁷

Though, a widow without a male child may with the concurrence (either actual or implied) of the husband's family be in possession of her deceased husband's property. However, she cannot assume ownership of the property, alienate nor by the effluxion of time, convert the property to become her private property, and her continued possession of such property is subject to her good behaviour. She can however let part of the estate to tenants so as to get some money for her maintenance.³⁵⁸

Husbands also do not have rights to inherit from their deceased wives' personal property.³⁵⁹ This position arose as a result of the general Igbo customary rule of inheritance following bloodline. Husbands and wives are considered to be of separate bloodlines under Igbo custom and tradition, therefore cannot inherit from each other. This position was buttressed by "Kasumu" as he argued that spouses have no right in each other's property either during marriage or on the death of one of them. The husband may during his lifetime allocate parts of his property to the separate use of his wife. Unless an outright gift is proved, the property allocated to the wife will at the demise of the husband revert back as family property. Rather, the widow's right in the

³⁵⁶ (1981) OYSHC, 140

³⁵⁷ Ibid.

³⁵⁸ *Lewis v. Bankole* (1909) 1 N.L.R 82

³⁵⁹ *Nwugege v. Adigwe & Ors* (1934) 11 N.L.R 134

land is to mere possession of a parcel of family property subject to her good behaviour.³⁶⁰

A gamut of legal exercises and activism has greeted the Igbo patrilineal system of inheritance and its perceived discriminatory attributes. The efforts of various years of relentless legal activism eventually paid off in the case of *Mojekwu v. Mojekwu*³⁶¹ in which Justice Niki Tobi ruled as unconstitutional and repugnant to natural justice, equity and good conscience, a patrilineal system of inheritance among the Nnewi people of Anambra State which denies women rights of property ownership on the ground of their gender. While delivering his judgement, the learned justice stressed that:

All human beings - male and female-are born into a free world, and are expected to participate of freely, without any inhibition on the ground of sex; and that is unconstitutional. Any form of societal discrimination on ground of sex, apart from being unconstitutional, is antithetic to a civil society built on the tenets of democracy, which we have freely chosen as a people. We need not travel all the way to Beijing to know that some of our customs, including the Nnewi "Oli-ekpe" custom relied upon by the appellant are not consistent with our civilized world in which we all live today. In my humble view, it is the monopoly of God to determine the sex of a baby and not the parents. (Although the scientific world disagrees with this; the belief that God, the Creator of human beings, is also the final authority of who should be male or female). Accordingly, for a customary law to discriminate against a particular sex is to say the least an affront to the Almighty God Himself. Let nobody do such a thing. On my part, I have no difficulty in holding that "Oli-ekpe" custom of Nnewi is repugnant to natural justice, equity and good conscience.³⁶²

The above ruling was commended by all liberal and progressive minded Nigerians and beyond who welcomed it as a wondrous breakthrough for women emancipation in Africa.³⁶³ It was regarded as a good starting point to challenge imbedded discriminatory customary provisions. Regrettably, the euphoria of this court of appeal ruling did not

³⁶⁰ Kasumu, A. B & Salacuse, J. W. *Nigerian Family Law* (London: Butterworth, 1966) at 296

³⁶¹ (2004) 4 S.C. (Pt. 11)

³⁶² Ibid., it should be noted here that the word "sex" as used in the above context denotes gender considerations and never in the form of biological differentiation.

³⁶³ Onuoha, R. A, 'Discriminatory Property Inheritance under Customary Law in Nigeria'.

last long as the Supreme Court later overruled the position of appeal court in *Mojekwu v. Iwuchukwu*. The learned justice, Uwaifo JSC, while delivering the lead judgement that overturned the earlier position held in that:

...the language used made the pronouncement so general and far-reaching that it seems to cavil at and is capable of causing strong feelings against all customs which fail to recognise a role for women, for instance, the customs and traditions of some communities which do not permit women to be natural rulers or heads or family heads. The import is that those communities stand to be condemned without a hearing for such a fundamental custom and tradition they practice by the system by which they run their native communities.... the underlying crusade in that pronouncement went too far to stir up a real hornet's nest...³⁶⁴

Though the grounds for the Supreme Court's contrary position in *Mojekwu v. Iwuchukwu* mentioned above has been criticised and grossly misconstrued to represent an endorsement of the disenfranchisements, subjugations and customary injustices suffered by women in Nigeria.³⁶⁵ This should not be so. It should be noted that the Supreme Court's opposing stance in this case was aimed at putting the house in order, thereby curbing the excesses of over-zealousness on the side of justices of the courts. At no point did the Supreme Court endorse the discriminatory elements of the Oli-Ekpe custom or the disinheritance of women. The court's position is simply an attempt geared towards making sure that judicial pronouncements are reached in accordance with the established judicial rules of engagement, thereby avoiding the pitfalls of unnecessary judicial claims and litigations, judicial rascality and miscarriage of justice, as well as upholding the principles of constitutionalism and rule of law in legal adjudications. The Supreme Court's rejection of the Court of Appeal's verdict was mainly based on four principal factors which are;

- i. Repugnancy claim upon which the court based the judgement was never part of the claims and prayers joined by either of the parties. It is trite law that courts must at all times limit itself to the issues joined by the parties on their pleadings. Going beyond the limits of the pleadings of the parties amounts to denial of fair hearing and prone to extol injustices.³⁶⁶ At no point in the

³⁶⁴ *Mojekwu v. Iwuchukwu* (2004) 4, S. C. (pt.11)

³⁶⁵ Onuoha, R. A, 'Discriminatory Property Inheritance under Customary Law in Nigeria'.

³⁶⁶ This position was reached at in *Atoyebi v. Odudu* (1990) 6 NWLR (pt. 157) 384. Also see *Oyekanmi v. NEPA* (2000) 15 NWLR (pt. 690) 414.

proceedings did any of the parties join issues on the repugnancy or otherwise of the “Oli-ekpe” customary practice of Nnewi people. Thus, questioning the evidential grounds on which the Court of Appeal, “*suo motu*”,³⁶⁷ declared the customary practice repugnant to natural justice, equity and good conscience. The failure of the Court of Appeal to draw the attention of the parties to the issue of repugnancy clause runs contrary to the procedural rules of engagement. It is an established legal principle that issues must be joined by the parties, and courts are under obligation to adjudicate upon same. Where issues are raised *suo motu*, the parties must be invited by the court to address on it.³⁶⁸ The violation of the procedural rules of engagement doomed the alleged infractions and overshadowed the discriminatory anomalies of the customary practices.

- ii. The Court of Appeal unnecessarily based the judgement partly on repugnancy of the “*Oli-ekpe*” customary practice even after it has earlier established that the custom wasn’t applicable to the present circumstance. It should be noted that the Appeal Court has already established during the course of the adjudication that the applicable law in *Mojekwu v. Mojekwu* case was the *Lex situs*, which in this case is the “kola tenancy”³⁶⁹ of the Mgbelekeke family of Onitsha where the property is situated, and not the personal law of the deceased.³⁷⁰
- iii. Concerns over the fluidity of the language used in the pronouncement. In the words of Justice Uwaifo, “...the learned Justice of Appeal Court (sic) was no doubt concerned about the perceived discrimination directed against women

³⁶⁷ “*Suo motu*” is a Latin legal term which means “on its own motion”

³⁶⁸ See *Kuti v. Jibowu* (1972) 6 SC. 147; *Badmus v. Abegunde* (1999) 11 NWLR. (pt. 627) 493.

³⁶⁹ Kola Tenancy is ‘a right to the use and occupation of any land which is enjoyed by any native in virtue of a Kola or other token payments made by such native or any predecessor-in-title in virtue of a grant for which no payment in money or kind was exacted’. Under this form of customary arrangement, the Kola tenant does not have the right to alienate the property in question as he/she enjoys only possessory rights. Such property is also inheritable by the heir of a deceased Kola tenant irrespective of their sex. This however is dependent upon the production by the succeeding child and acceptance by the granting family of further Kola. See section 2 of the Kola Tenancy Act, No. 25 (now appearing as the Kola Tenancy Law, Cap 69. 1963 edn. Law of Eastern Nigeria)

³⁷⁰ The personal law of the deceased in this case is the controversial “Oli-Ekpe” customary practice of Nnewi people which denies women rights of inheritance.

by the said Nnewi ‘Oli-ekpe’ custom, and that is quite understandable. But the language used made the pronouncement so general and far-reaching that it seems to cavil at and is capable of causing strong feelings against all customs which fail to recognise a role for women”.³⁷¹ All binding judicial pronouncements must be rooted in established principles of rule of law. Thus, there must be a cause upon which judicial pronouncements are founded. It is a dangerous development for the legal community and indeed the larger society to accommodate the violation and abuse of judicial processes on the ground that it overtly or covertly yielded positive results. However, it is worthy to state here that the reasons adduced by the Supreme Court for overruling the Appeal Court’s verdict in *Mojekwu v. Mojekwu* is based mostly on procedural defects.

Female children also have neither possessory nor inheritance rights under the Igbo patriarchal customary rule. However, an unmarried woman can acquire these rights if she subjects herself to the customary rule of “Nrachi”.³⁷² A daughter who performs the “nrachi” ceremony automatically takes the position of a man in her father’s house). This position was challenged and ruled as repugnant in the case of *Mojekwu v. Ejikeme*³⁷³ where the Court of Appeal ruled that female children could inherit from the estate of their deceased fathers without subjecting themselves to the repugnant customary practice of “nrachi”. Taking a position in line with the provision of section 42(1) of the 1999 Constitution of the Federal Republic of Nigeria which states that “a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person, be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government to disabilities or restrictions which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinion are not made subject”. The Court of Appeal held “Nrachi” custom to be repugnant to natural justice, equity and good conscience, as it is another way of legalizing prostitution and fornication within the society.

³⁷¹ *Mojekwu v. Iwuchukwu* (2004) 4, S. C. (pt.11)

³⁷² “Nrachi” is an Igbo customary practice which allows a man without a male child to keep one of his daughters at home unmarried for the rest of her life to bear children, especially male children, who would succeed him

³⁷³ (2000) 5 NWLR 402

The Supreme Court's discouraging stance in *Mojekwu v. Iwuchukwu* which invalidated the Court of Appeal's favourable pronouncements for the inheritance rights of female heirs, and its endorsement of the denial of widows' right of inheritance as was the case in *Nezianya v. Nezianya*, however, did not permanently decimate the gender rights drive for women inheritance rights. On 11th of April 2014, in a unanimous decision, the Supreme Court's pronouncements on two discriminatory inheritance cases grossly altered the tide against discriminatory customary rights of inheritance in Nigeria. The twin rulings in *Ukeje & ors v. Ukeje*³⁷⁴ and *Anekwe & ors v. Nweke*³⁷⁵ were given against two elements of the Oli-ekpe customary practice, namely the Igbo customary practice that precludes female children from inheriting from their family assets, and the customary practice that disinherit both barren women and widows without male children as they were only entitled to usufructuary right to land and other assets subject to their good behaviours.³⁷⁶ The latest position of the Supreme Court in relation to the above dual pronouncements is in tandem with section 42(1&2) of the 1999 Constitution which made express and profound provisions against all forms of discriminations against any Nigerian citizen on the grounds of ethnic affiliation, place of origin, sex, religion and political opinions.³⁷⁷ This position was captured by Rhodes-Vivour JSC while delivering the lead judgement in *Ukeje* case thus;

No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law which disentitled a female child from partaking in the sharing of her deceased father's estate is in breach of section 42(1) and (2) of the constitution, a fundamental rights provision guaranteed to every Nigerian.³⁷⁸

The above ruling is expected to put an end to the discriminatory customary tenurial practices of the Igbo people, as well as all other native laws and customs, or general laws across Nigeria that accommodate and encourage the disinheritance of women from their family estates based on gender or any other primordial considerations.

³⁷⁴ (2014) 3-4 MJSC 149, (2014) 234 LRCN 1

³⁷⁵ (2014) 3-4 MJSC 183, (2014) 234 LRCN 34, (2014) 9 NWLR (pt. 1412) 393

³⁷⁶ The Supreme Court's earlier pronouncements on widow's property rights accords them only usufructuary rights subject to their good behaviours. See *Nezianya v. Okagbue* [1963] 3 NSCC 277, and *Nzekwu v. Nzekwu* [1988] 1 NSCC 581, [1989] 2 NWLR (Pt. 104) 373

³⁷⁷ See section 42(1&2) of the 1999 Constitution of the Federal Republic of Nigeria

³⁷⁸ *Ukeje v. Ukeje* (2014) 3-4 MJSC 149 at 175

In like manner, the controversies surrounding the discrimination and depravity suffered by children born outside wedlock otherwise known as “illegitimate” children, who neither enjoy inheritance nor usufructuary property rights was equally laid to rest by the Supreme Court in the same stroke, Ogunbiyi JSC in her concurring opinion stated that “the Igbo native law and custom which deprives children born outside of wedlock from sharing the benefit of their father’s estate is conflicting with section 42(2) of the [1999] constitution of the Federal Republic of Nigeria”.³⁷⁹ In an apparent attempt to deviate from the taciturn and restrained dispositions exhibited by other members of the panel of justices in the Ukeje case, Ogunbiyi JSC while delivering the lead judgement in *Anekwe v. Nweke*³⁸⁰ took the case for women and “illegitimate children” further by outrightly condemning the custom of Awka people relied upon by the appellants, stressing that the existence of customs of such nature in this modern age depicts the realities of the absence of human civilization. Such a chauvinistic claim supports perpetration of male dominance with the aim of preying on womenfolk. The days of such obvious differentiation ought to be over. Cultures that disinherit daughters from their father’s property or wives from their husbands’ estate based on gender differentials must be seriously dealt with to serve as a deterrent to others. Such customs are repugnant to natural justice, equity and good conscience.³⁸¹

All the other justices of the panel, in their separate concurring statements voiced their disdain and disappointments at the continued existence of discriminatory customary practices of disinheritance and deprivation within our societies today and unanimously opined that such an act should not be allowed to see the light of the day. Muhammad JSC while delivering his concurring judgement on the Anekwe case stated that:

It baffles one to still find in a civilized society which cherishes equality between the sexes, a practice that disentitles a woman (wife in this matter) to inherit from her late husband’s estate, simply because she had no male child from her husband. This practice, I dare say, is a direct challenge to God the creator who bestows male children only; female children only [as in this matter], or an amalgam of both males and females to whom he likes...To perpetuate such a practice as is claimed in this matter will appear anachronistic, discriminatory and non-progressive. It offends the rule of natural justice, equity and good

³⁷⁹Ibid.

³⁸⁰ (2014) 3-4 MJSC 183, (2014) 234 LRCN 34, (2014) 9 NWLR (pt. 1412) 393

³⁸¹ Ibid.

conscience. The practice must fade out and allow equity, justice and fair play to reign in the society.³⁸²

As for Muntaka-Coomassie JSC and Ariwoola JSC, their positions were that the custom relied upon and canvassed by the appellants are not only barbaric, but repugnant to natural justice, equity and good conscience.³⁸³ In the words of Ngwuta JSC, “the custom pleaded herein...wherein a widow is reduced to chattel and part of the husband’s estate, constitutes, in my humble view, the height of man’s inhumanity to woman, his own mother, the mother of nations, the hand that rocks the cradle...The custom of Awka people of Anambra State pleaded and relied on by the appellant is barbaric and take the Awka community to the era of cave man. It is repugnant to natural justice, equity and good conscience and ought to be abolished”.³⁸⁴

Evident from the analyses so far is the strong passion and sense of commitment displayed by the panel of justices of the Supreme Court in making sure that all tenurial customary legal provisions that discriminate against women are stamped out of the Nigerian social structure. This is obviously an unprecedented shift from the Supreme Court’s long held conservative policy of misogyny and previous controversial pronouncements which had favoured the tradition of subjugation, servitude and deprivation occasioned by the denial of women’s rights of property inheritance across various tribes in Nigeria. This has undermined the activist zeal of the Appeal Courts in their quest for the reformation or proscription of perceived discriminatory native law and customs. Thus, one wonders what informed the sudden change of position on the side of the Supreme Court with regards to the *Anekwe and Ukeje* cases above. A look at major Supreme Court’s pronouncements on matters concerning women’s property rights over the years brings to the limelight the reasons behind the scepticism surrounding the recent policy shift. It should be noted that in *Sogunro-Davies v. Sogunro & Ors*,³⁸⁵ the Supreme Court justified the customary practice that disinherits a widow on the grounds that customary inheritance follows bloodline, and wives are considered a different bloodline from that of their husbands.

In *Nwugege v. Adigwe*,³⁸⁶ Supreme Court equally ruled against spousal rights of property inheritance. However, it went further to establish that a husband has rights of

³⁸² *Ukeje v. Ukeje* (2014) 3-4 MJSC 220-221

³⁸³ *Ibid.*, 223 and 226

³⁸⁴ *Ibid.* 224

³⁸⁵ (1929) 2 N.L.R. 79

³⁸⁶ (1934) 11 NLR 134

inheritance over the personal property of his deceased wife while denying widows same; in *Suberu v. Sunmonu*,³⁸⁷ *Yusuf v. Dada*³⁸⁸ and *Akinnubi v. Akinnubi*,³⁸⁹ the Supreme Court ruled that a wife cannot inherit from her husband's assets since she herself is considered a part of the chattel to be inherited by her husband's relatives; in *Nezianya v. Okagbue*³⁹⁰ and *Nzekwu v. Nzekwu*,³⁹¹ Supreme Court maintained that a widow cannot deal with or administer her deceased husband's estate without the consent of his family, neither could she by effluxion of time claim the property as hers. A childless widow or one without male child enjoys only possessory or usufructuary rights over her husband's estate. She can occupy and manage the building or part of her late husband's building subject to her good behaviour and goodwill of her deceased husband's relatives; in *Mojekwu v. Iwuchukwu*,³⁹² the Supreme Court failed to uphold an Appeal Court's decision which would have granted women the right of property inheritance in Nigeria. Above are few of the case studies which give credence to the question on why the Supreme Court suddenly deemed it fit to abandon its male chauvinistic tradition which it has cultivated and sustained for so long a time.

4.6: POSSIBLE REASONS FOR THE NIGERIAN SUPREME COURT'S POLICY SHIFT

Prior to the Ukeje, Uke and Anekwe cases, majority of the pronouncements by the Supreme Court of Nigeria on matters relating to women's property rights had always been antithetic to social equality arguments and women's emancipation ideology. This could be inferred from the various case studies described and referenced above.³⁹³ Meanwhile, various factors readily come to mind as to the probable reasons for the Supreme Court's shift in policy context. These factors are worthy of examination to determine the level of correlation between them and the Supreme Court's recent positions. Attempts are hereafter made towards examining the contexts of the assertions, and to what extent did the influence of these factors precipitate the paradigm shift within Nigerian judicial landscape.

³⁸⁷(1957) 2 F.S.C. 31

³⁸⁸(1990) 4 NWLR (pt. 146) 657, 669

³⁸⁹ (1997) 2 NWLR (pt. 486) 144

³⁹⁰ (1963)1 A.N.L.R p. 352

³⁹¹ (1989) 3 SCNJ 167, (1989) NWLR (pt. 104) 373

³⁹² (2004) 4 SC. (pt.11)

³⁹³ See *Sogunro-Davies v. Sogunro & Ors* (1929) 2 N.L.R. 79; *Nwugege v. Adigwe* (1934) 11 NLR 134; *Suberu v. Sunmonu* (1957); *Yusuf v. Dada* (1990); *Akinnubi v. Akinnubi* (1997)

One would readily consider the promotion of the “Activist Justices” from the lower Court of Appeal to the Supreme Court as a factor worthy of examination in this instance. These Activist Justices, as they are being referred to in Nigeria, were former members of the Appeal Courts who have actively participated in the delivery of judgements, pronouncements and concurring statements that were instrumental in clamping down most of the perceived discriminatory customary practices in Nigeria.³⁹⁴ Some of the recent Appeal Court cases bothering on tenurial rights, equity and justice in which these Activist Justices prominently participated and by virtue of their actions, engineered the proscription of perceived discriminatory practices include *Mojekwu v. Mojekwu*,³⁹⁵ *Mojekwu v. Ejikeme*,³⁹⁶ *Ukeje v. Ukeje*,³⁹⁷ *Uke v. Iro*³⁹⁸ and *Anekwe v. Nweke*.³⁹⁹ All but few of the members of the panels that deliberated on these celebrated and ground breaking cases were eventually promoted to the Supreme Court where they were expected to continue in their active participation in ridding the Nigerian society of the ills of discriminatory practices and women subjugations. Thus, one can confidently conclude that the elevation of these Activist Justices to the Supreme Court constitutes a major factor that influenced the Supreme Court’s sudden change from its atavistic disposition.⁴⁰⁰ Even though some scholars have opined otherwise.⁴⁰¹ Such stand is however informed by the fact that some of these Appeal Court’s Activist Justices were unable to do much by the time they were eventually elevated to the Supreme Court. In fairness, these scholars also stressed that their non-performance may have been a result of either lack of opportunity to prove their worth or they may have been trapped in the web of the Supreme Court’s Conservative disposition.⁴⁰² However, it is difficult to imagine what reasonable excuses that could make an Activist Justice that built all

³⁹⁴ Madumere Nelson, ‘Evaluating Contemporary Policy Measures on Sustainable Equitable Tenurial Rights in Nigeria’. (2018) International Journal of Law and Interdisciplinary Legal Studies, Vol 4 Issue 1. P. 12

³⁹⁵ (1997) 7 NWLR (pt. 512) 288

³⁹⁶ (2000) 5 NWLR 402

³⁹⁷ 2001) 27 WRN 142

³⁹⁸ (2001) 11 NWLR (Pt. 723) 196

³⁹⁹ (2014) 3-4 MJSC 183

⁴⁰⁰ Madumere Nelson, ‘Evaluating Contemporary Policy Measures on Sustainable Equitable Tenurial Rights in Nigeria. P. 12- 13

⁴⁰¹ Edoba Bright Omoregie, Aigbovo. O and Ewere. A. O are among scholars who believe that the elevation of the Activist Justices did not play major role in the Supreme Court’s policy change on discriminatory tenurial practices.

⁴⁰² Aigbovo. O and Ewere, A. O, Adjudicating Women’s Customary Law Rights in Nigeria. (2015) African Journal of Law and Criminology. P. 20-21.

<http://www.sachajournals.com/documents/image/au2015ajlc0022.pdf>>. Accessed 04/02/2018

his/her professional careers on campaign against socio-cultural, religious and institutional injustices to suddenly change course and abandon all traces of activist drive when finally presented with the much desired platform and opportunity to eradicate the social ill of discrimination once and for all.⁴⁰³

The second reason worth considering for the Supreme court's policy change towards discriminatory tenurial practices in Nigeria is the recent unprecedented involvement of female justices in the bench and their appointment into major positions of authority in Nigerian judiciary. Justice Zainab Adamu Bulkachuwa and Justice Mariam Aloma Muktar⁴⁰⁴ made history as the first female president of the Appeal Court and Chief Justice of the Supreme Court of Nigeria respectively. The duo were responsible for empanelling the justices that would hear cases brought before these courts, and it is not surprising that women were conspicuously represented in the panels of justices that heard many recent celebrated cases.⁴⁰⁵ Other female jurists that made it to the Supreme Court bench include Justice Olufunlola Adekeye, Justice Mary Peter-Odili, Justice Clara Bata Ogunbiyi and Justice Kudirat Kereke-Ekun.⁴⁰⁶ These factors are obviously instrumental to the laudable outcomes of the recent Supreme Court of Nigeria's new found activist zeal.

Despite the commendations and higher expectations from Nigerians arising from these Supreme Court's new positions, there exist palpable scepticisms over the future sustainability of the Supreme Court's recent activist trend as these developments did not arise as a result of any institutional or legal reform, rather, they are outcomes of personal goodwill of individual personalities who took the decision to act in good faith for the reprieve and emancipation of cross sections of the Nigerian populace whose fundamental human rights are being flagrantly violated on the grounds of their gender and other primordial considerations. Therefore, there is growing concerns on what becomes of these new positive developments beyond the tenures and active services of these worthy activist jurists. More so, our legal jurisprudence is replete with cases

⁴⁰³ Madumere Nelson, 'Evaluating Contemporary Policy Measures on Sustainable Equitable Tenurial Rights in Nigeria'. P. 13

⁴⁰⁴ First female Chief Justice of Nigeria hits the ground running. – Vanguard Newspaper, 10th August 2012. <<https://www.vanguardngr.com/2012/08/first-female-chief-justice-of-nigeria-hits-the-ground-running/>>. Accessed 12/09/2018

⁴⁰⁵ Madumere Nelson, 'Evaluating Contemporary Policy Measures on Sustainable Equitable Tenurial Rights in Nigeria'. P. 14

⁴⁰⁶ Daily Trust, 'Nigeria; three women of the Supreme Court- allAfrica.com', March 22, 2016. <<https://allafrica.com/stories/201603220290.html>>. Accessed 02/08/2017

where Nigerian Courts either give conflicting decisions on matters of similar legal principles or over-ruled their earlier positions on important matters. One wonders if there is any guarantee against such becoming the fate of these new Supreme Court's commendable verdicts.⁴⁰⁷

4.7: Conclusion.

It could be inferred from above analysis that not much has changed for the benefit of the discriminated and disinherited groups in Nigeria. This study has succeeded in revealing the common discriminatory trend that characterise all land ownership, inheritance and management patterns across ethno-tribal, religious and cultural divides in Nigeria. It also established the inability of both the statutory approach and judicial intervention to salvage the situation, thus the continued call for the adoption of pragmatic and innovative approached to land and tenure reformation in Nigeria. Even the recent supreme court positive rulings do not offer much hope in this regard as the sustainability of the outcome is still very much in doubt.

It is instructive to note that at the point of this report, there exist no comprehensive documentations, academic publications or reliable data on the degree of applicability, acceptability and impacts of these recent Supreme Court rulings on the land rights and tenure security of women and other vulnerable groups whose fundamental human rights were restored by the court decisions. The level of awareness and rate at which the poor and disinherited Nigerian women are willing to leverage on the positive outcome of the judicial interventions in Nigerian land and tenure security question is yet to be ascertained. There is need to know if Nigerian women are now claiming their land rights as pronounced by the court. If yes, at what extent and cost, and if no, why?. It is on that premise that this thesis calls for systematic researches and robust impact assessment engagements to determine the effects of these rulings on the lives, survival and emancipation of the poor, rural and disinherited Nigerian women and other vulnerable groups. It is upon this revelation and call for further research and investigations that the thesis made its first contribution to knowledge.

Conclusively, it is indisputable that there is absolutely no substitute for strong and independent institutions in the sustainability of any developmental accomplishments. These obvious realities inform the assertion that "it is not yet uhuru" for the disinherited

⁴⁰⁷ Madumere Nelson, 'Evaluating Contemporary Policy Measures on Sustainable Equitable Tenurial Rights in Nigeria'. P. 15- 16

Nigerian women and other vulnerable groups facing various forms of deprivations and dehumanisations on the ground of unlawful considerations. Efforts must be consciously made towards institutional and legal reforms in Nigeria as the paucity and weakness of available institutional and legal system are two major issues of concerns that must be addressed for the sustainability of developmental accomplishments in Nigeria. In the light of the limitations inherent in the conventional land administration system and the inability of the preferred reform approaches to yield expected results, the need to examine and interrogate the plausibility or otherwise of other available reform trends and case studies across African continent for possible adoption in Nigeria becomes inevitable.

CHAPTER 5: REFORM TRENDS AND POLICY DEBATES IN AFRICA: PROBLEMS AND PROSPECTS

5.1: INTRODUCTION

Obviously, neither the introduction of a new land administration regime in the form of Land Use Act of 1978 nor the positive outcomes of the recent judicial activism in Nigeria has been able to enthrone a robust, equitable, fit-for-purpose, responsible and sustainable tenure regime capable of protecting the tenurial rights of women and other vulnerable Nigerians. This is evident from the continued existence of the very old and emerging exigent challenges that precipitated the aforementioned policy choices.

Paucity of institutions, weak and non-responsible legal provisions, lack of political will for policy implementation and unreliable judicial system are some of the reasons why the recent breakthrough in legal activism could neither end the discriminations and injustices against women's property rights as inherent in the prevailing land tenure system, nor douse the continuous calls for reforms in Nigeria.⁴⁰⁸

However, one critical question that begs for an urgent answer is "what type and form of land reform will be most appropriate for the Nigerian State, considering her socio-cultural, ethno-tribal, economic, environmental and religious peculiarities?. How best can women's property rights be guaranteed in a patrilineal Nigerian society. Providing an answer to the above question would require an examination of the available reform trends and policy measures, as well as country experiences across Africa with the aim of ascertaining if there exist any reform type that would be appropriate for Nigerian peculiar challenges. This chapter sets out to do exactly that in relation to the challenges of the Nigerian land administration system and tenure insecurity.

Though it is worthy to admit that certain reform measures and guides that may have worked and yielded remarkably positive results in one country might be inappropriate for the expected goal attainment in another country. However, irrespective of how inapplicable a country's chosen reform measure might be to other countries, there must surely be lessons to be learned from previous reform efforts of other countries.⁴⁰⁹ These

⁴⁰⁸ See chapter 4 of this work for full analysis of the Supreme Court's recent positions on land rights in Nigeria.

⁴⁰⁹ Byamugisha, Frank F. K., 'Agricultural Land Redistribution and Land Administration in Sub-Saharan Africa', in Byamugisha, Frank F. K., (ed) *Agricultural Land Redistribution and Land Administration in Sub-Saharan Africa: Case Studies of Recent Reforms. Directions in Development*. Washington, DC: World Bank. doi:10.1596/978-1-4648-0188-4. License: Creative Commons Attribution CC BY 3.0 IGO. P. 1

lessons would be relevant to countries that are starting out on the path to reform and would help them navigate the avoidable pitfalls associated with such an exercise. For instance, land nationalisation exercise in Malawi (with its disregard for the existing customary tenure system), and subsequent conversion of same to public and private tenure has failed to yield the expected goals, as the exercise resulted in restricted availability of land for cultivation by rural households, exacerbated tenure insecurity for the remaining customary tenure holders, thereby leading to low productivity and limited investment in land.⁴¹⁰ Conversely, similar exercise in Botswana and subsequent integration of traditional tenure with modern system of administration for both customary and commercial land users has recorded considerable and commendable progress.⁴¹¹ More so, reports from Thailand show how tenure security through land titling has resulted in land improvements, commercialization and modernization of agriculture, leading to enhanced agricultural productivity. However, land titling exercise in Ghana was a total failure as will be seen from later analysis in this chapter and chapter seven of this paper. Similarly, evidence from the widespread land title registration exercise that has been going on for over four decades in Kenya shows that land title has in fact weakened the position of the poor, resulting in tenure insecurity for secondary claimants (particularly women), increased disputes and confusion.⁴¹² A study of what made these exercises a success in some states and monumental failures in others would be a good starting point for any state in Africa desirous of progressive and profitable reform exercises.

5.2: FACTORS THAT NECESSITATE LAND REFORM IN AFRICA

The need for the liberalization of African economies have often been cited as one major catalyst that precipitated the unprecedented rise in demand for land reforms within the African continent; a concept that elicited debates and saturated African political agenda of the late 1980s. However, the enormous pressure on African states from various rural constituents demanding an end to historical social injustices occasioned by various colonial and post-colonial land expropriations, mass displacements and the associated conflicts appears to be a more plausible reason for the rise in demand for land reforms.

⁴¹⁰ Yaro, J. A. 'Customary tenure systems under siege: contemporary access to land in Northern Ghana'. (2010) *GeoJournal*. P. 201- 202.
[<file:///C:/Users/USER/Downloads/Customary_tenure_systems_under_siege_con.pdf>](file:///C:/Users/USER/Downloads/Customary_tenure_systems_under_siege_con.pdf)
 Accessed 05/01/2018

⁴¹¹ Ibid. p. 202- 203

⁴¹² Ibid.

Even the above reasons have been argued to be inadequate in explaining the reasons behind the total overhaul in land matters that was experienced across African continent years later.⁴¹³

Notedly, lands within sub-Sahara African region has significant correlation to the economic, poverty alleviation, food security and general developmental progress of the states. Its importance to the sustainability of states' developmental and welfare programmes within the region can only be imagined. It remains the backbone of many of the economies, and contributes a sizeable amount of the sub-Saharan African states' GDP as well as employments, thereby constituting the major source of livelihood to a larger percentage of the populace.⁴¹⁴ In Nigeria particularly, land remains the most valuable asset at the disposal of rural Nigerian dwellers, even as agriculture and its related services provide enormous employments for over 90% of the rural population.⁴¹⁵ However, clear majority of Nigerian rural lands on which these agricultural activities take place are not registered and are informally administered, making the lands not only susceptible to expropriation without commensurable compensation but also ineligible to be used as collateral for securing loans for agricultural improvements.⁴¹⁶ Thus, neoliberal apologists have argued that land questions must be broadened to reflect exigencies of the modern world, as formally administered private and secure tenure enables a range of access to credit facilities, create property class and reduce governments' overreaching control of economic and social matters. Hence, the call for customary tenure reform to unleash the developmental potentials inherent in these areas.⁴¹⁷

In addition to the challenges of economic diversification and unjust expropriations earlier mentioned, there also exist increased demand and pressure on land occasioned by both demographic growth, urban expansion and foreign investments in agriculture, environmental degradations such as desert encroachment, flood and droughts, as well as changes in the socio-economic composition of the society which has undermined the

⁴¹³ Manji, Ambreena. *The politics of Land Reform in Africa: From Communal Tenure to Free Market* (Zeb Books Ltd, 2006) p. 31

⁴¹⁴ Cotula, L., et al., 'Land Tenure and Administration in Africa'. P. 1

⁴¹⁵ Maureen Mobuogwu, Focus on Land /Brief Rural Land and Credit Access in Nigeria /countries. <www.focusonland.com/foa/brief-rural-land-and-credit-access-in-nigeria>. Accessed 01/05/17

⁴¹⁶ Ibid.

⁴¹⁷ Yaro, J. A. 'Customary tenure systems under siege: contemporary access to land in Northern Ghana. P. 202

capacity and smooth operations of the hitherto effective customary rules and traditional institutions such as the established emirates, caliphates and the Oba empires, Stools, Skins and other traditional authorities across African states.⁴¹⁸ These factors have resulted in unprecedented competitions for, and scarcity of land as could be seen from the plethora of land and tenure disputes examined in chapters two and three of this thesis. In view of these obvious challenges, many African states, in collaboration with various donor and development agencies, have within last decades adopted various policy and legal measures aimed at tackling the menace of land scarcity, tenure insecurity, unlawful expropriation, historical tenurial injustices, past and on-going discriminatory tenurial customary practices, and the recent challenges of land grabs championed by multi-national commercial agricultural investment companies in collaboration with the governments of various developing countries.⁴¹⁹

5.3: LAND REFORM IN AFRICA: AN OVERVIEW OF SELECTED REFORM CHOICES

Whereas it is possible for one to identify common trends in the land relation equation and debates across African continent, such as the broad recognition that lack of land documentation and formalisation constitutes a major developmental challenge across African continent, and the negative impacts of discriminatory tenurial practices against women and other vulnerable members of the society, there is unfortunately less agreement on how to effectively tackle these challenges.⁴²⁰ Land administration and its management in Africa is characterised with enormous diversities and societal

⁴¹⁸ Asaju, K. 'Local Government Autonomy in Nigeria: Politics and Challenges of the 1999 Constitution' (2010). International Journal of Advanced Legal Studies and Governance Vol. 1 No.1, p. 103. http://www.icidr.org/ijalsg_vol1no1_april2010/Local%20Government%20Autonomy%20in%20Nigeria-Politics%20and%20Challenges%20of%20the%201999%20Constitution.pdf. Accessed 10/01/2018. See also Ubink, J. M and Quan, J. F, 'How to combine tradition and modernity? Regulating customary land management in Ghana'. (2008) Land Use Policy. Volume 25, issue 2. P. 42. <https://openaccess.leidenuniv.nl/bitstream/handle/1887/12630/02.pdf?sequence=6>. Accessed 04/01/2018.

⁴¹⁹ See Tinyade Kachika, 'Land Grabbing in Africa: A Review of the Impacts and Possible Policy Response'. <http://www.oxfamblogs.org/eastafrica/wp-content/uploads/2010/11/Land-Grabbing-in-Africa-Final.pdf>. Accessed 12/01/18

⁴²⁰ Bruce, John, 'Decentralization of Land Administration in Sub-Saharan Africa: Recent Experiences and Lessons learned', in Byamugisha, Frank F. K. (ed.), *Agricultural Land Redistribution and Land Administration in Sub-Saharan Africa: Case Studies of Recent Reforms*, (2014) Directions in Development. Washington, DC: World Bank. P. 55. https://doi.org/10.1596/978-1-4648-0188-4_ch3. Accessed 09/09/2018

idiosyncrasies which makes generalisation nearly impossible. Thus, making land reform challenges a “wicked problem”.⁴²¹ And, in the words of Tim Benton,

Where such ‘wickedness’ exists, there are no simple solutions to a problem meaning that it is difficult to identify any specific intervention in land management that can provide unambiguous positive attributes for all potential stakeholder groups and ecosystem services.⁴²²

The absence of consensus on preferred approaches and tenurial reform intervention mechanisms in Africa stems from the variations inherent in both the composition of most African states, and the difference in the social-cultural, political, religious, economic and colonial experiences that shape each of these states. This obvious reality significantly narrowed my choice of comparator states and also informed the preference for my chosen research methodology as established earlier in this thesis.

For instance, the colonial legacy of unjust expropriation has left on its track profound relics of racially skewed land distribution, tenure insecurity, overcrowded communal landscapes for the local dwellers and land degradations in many settler states mostly within the southern African bloc such as south Africa, Zimbabwe and Namibia. This scenario fuelled the land redistribution and restitution land reform agenda, thereby eliciting a call for tenurial reform measure different from other places like the East and West African regions where other socio-political, cultural and religiously induced subjugations and discriminatory provisions have created an unjust tenurial distributions based on gender dichotomy and social differentiation. Examples of such socio-culturally and religiously induced discriminatory tenure arrangements could be seen from the prevailing tenure systems in Nigeria⁴²³ and that of Ghana which will be fully explored in the later part of this work. Also, the recent globalisation of business transactions has brought about cross-border and foreign direct investments from global marketers and foreign corporate investors. As land remains a basic resource for economic developments, decisions on such investments are often conditioned by the availability

⁴²¹ A “wicked problem” is a problem devoid of acceptable straight forward solution. See Rittel, H.W. and M.M. Webber, Dilemmas in a general theory of planning. Policy sciences, 1973. 4(2): p. 155-169

⁴²² Tim Benton, “Wicked” decision making in sustainable land use. Chatham House publication, 18th of May 2017.

<<https://hoffmanncentre.chathamhouse.org/article/wicked-decision-making-in-sustainable-land-use/#footnote-3>>. Accessed 20/05/2017

⁴²³ See chapter 4 for the complete analysis of discriminatory tenurial rights in Nigeria.

of land.⁴²⁴ This has resulted in the recent mass dispossession of vast rural and communal lands within some African states by foreign investors in connivance with governments and constituted authorities within the states.

There exist different types of land reform which has been adopted by many countries across African continent at varying times in their attempts at finding lasting solution to their peculiar challenges. These include land nationalisation reform as practiced in Nigeria; Land title and registration exercise in Kenya and Ghana; land restitution and redistribution as seen in South Africa and Zimbabwe; Agrarian collectivisation in Ethiopia, Angola and Mozambique. There is also customary tenure reaffirmation and recognition; a new land reform prescription dominating current land reform debates in Sub-Sahara Africa which aims to accord formal recognition to perceived insecure customary tenures.⁴²⁵ However, for the sake of this paper, our attention will be restricted to those land reform measures whose elements and implications are particularly deemed relevant to our current discussion and the environment under study. In other words, we will particularly explore those forms of land reform that have, at different historical, political and developmental points in time, been carried out within Nigeria and Ghana.

It should be noted that a country may employ more than one form of land reform at the same time in accordance with the divergent nature of the challenges they face, one clear example is South Africa where redistributive and restitutive land reform policies are adopted simultaneously by the government. Each of these reform trends requires various degrees of administration, rights allocation, enforcements, as well as mechanisms for mediating and resolving conflicts arising from the exercise. More so, whereas these reform approaches may appear conceptually distinct, a given case may involve an admixture of different reform approaches. For example, title registration and recognition of customary tenurial rights can be seen as variants of tenure formalization.⁴²⁶ The relevant land reform measures, their attributes and the

⁴²⁴ Benjamin. G. E, et al., 'Factors influencing land title registration practice in Osun State, Nigeria', *International Journal of Law in the Built Environment*, Vol. 9 Issue: 3, pp.240-255, at 241. <<https://doi.org/10.1108/IJLBE-04-2017-0014>>. Accessed 08/11/2017

⁴²⁵ Quan, Julian. 'Land Tenure, Economic Growth and Poverty in Sub-Sahara Africa', in Toulmin C and Quan J. F (ed), *Evolving Land rights, Policy and Tenure in Africa*. (DFID/IIED/NRL. London 2000) p. 33

⁴²⁶ Meinzen-Dick, R et al, 'Decentralization, pro-poor land policies and democratic governance. Systematic approach to Collective Action and Property Rights (CAPRI)', (2008) working paper 80, P. 2. <<http://ageconsearch.umn.edu/bitstream/44353/2/capriwp80.pdf>>. Accessed 19/11/17.

implications of their applications at states' levels, as well as impacts on the wellbeing of women and other vulnerable groups are discussed hereafter.

5.3.1: LAND REGISTRATION AND TITLING

Land titling and registration entails the systematic documentation, formalization and certification of titles to land or tenurial rights. It involves the act of according formal recognition to a person(s)'s proprietary rights in land. Thus, whereas land titling covers the process of according formal recognition to the proprietary rights, land registration denotes the recording of already formally recognised and valid right in land.⁴²⁷ The documentation of land rights can manifest in different forms, ranging from centralised form to communal based registration of tenurial right claims. This may either document existing tenurial rights (either customary or statutory) or convert already documented tenurial rights into freehold.⁴²⁸ Freehold titling particularly covers all secure, individual and freely transferable rights of property ownership which is guaranteed by the state. It is regarded as the strongest and most reliable form of tenurial rights.⁴²⁹

Various forms of land registration and titling programmes have been embarked upon at different points by governments and donor stakeholders across African continent in the last decades. African land matters are governed by a blend of “customary” and “statutory” processes which are regulated through both “formal” and “informal” institutions of administration in line with the pluralistic nature of the African society. Thus, “a range of customary, statutory and hybrid institutions and regulations having de jure or de facto authority over land rights co-exist in the same territory”.⁴³⁰ The existence of different ranges of statutory and customary institutions and regulations over land matters at the same time often give rise to the concept of “forum-shopping”, while absence of clear cut hierarchy of responsibilities and coordination amongst different rules and regulatory structures create room for avoidable confusion and insecure tenure relations. Thus;

⁴²⁷ Benjamin. G. E, et al., ‘Factors influencing land title registration practice in Osun State, Nigeria’, P. 241

⁴²⁸ Quan, J and Toulmin, C. ‘Formalising and securing land rights in Africa: overview’, in *Land in Africa: Market asset or secure livelihood?* Proceedings and summary of the conclusions from the land in Africa conference held in London, November 8-9, 2004. Julian Quan et al (ed). P. 75. <<http://pubs.iied.org/pdfs/G00166.pdf>>. Accessed 20/05/17

⁴²⁹ Ibid.

⁴³⁰ Cotula, L., et al., ‘Land Tenure and Administration in Africa’. P. 2

parties to land disputes invoke different norms to support competing claims and choose the institutional channel which they feel is most likely to be favourable to their cause. Typically, certain actors prefer one or other system. For example, urban investors prefer to seek formal written backing for their land rights, while local people may feel their rights are best represented through the customary sphere. Migrants and women may feel that the formal statutory system provides a better guarantee of their rights over land than would be possible under customary norms.⁴³¹

The readily available measures often advocated for the resolution of the controversies associated with the existence of multiple regulatory institutions and applicable divergent land rules across African states has been a consistent call for the eradication of customary tenurial rights, and the enthronement of a clear cut strong, stable and secure private property regime which would attract and guarantee more incentives for the much-needed investments in land.⁴³² The actualisation of this postulation, it has been argued, can best be guaranteed through land titling and registration.⁴³³ This ideology was championed by Hernando De Soto⁴³⁴ who strongly argued that the reason third world countries continue to be poor is because their property rights are not formerly documented, thus cannot readily be turned into live capital; neither could they be used as collateral, a share against investments or traded outside the confines of narrow local circles where trust is predicated on the mutual knowledge of one another.⁴³⁵ This ideology gained traction within various parts of the African continent as against the persistent claims that customary tenurial rights provisions have the capacity to provide adequate tenurial security particularly at the rural level, and that the introduction of freehold title to land risks jeopardising the security of the land rights of women, the rural poor and vulnerable members of the society.⁴³⁶

⁴³¹ Ibid.

⁴³² Ibid. Also see Yaro, J. A. 'Customary tenure systems under siege: contemporary access to land in Northern Ghana'. P. 202- 203

⁴³³ Ibid.

⁴³⁴ Hernando De Soto is a Peruvian economist known for his postulation on informal economy and the correlation between private property rights and development.

⁴³⁵ De Soto, Hernando, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. (Basic Books, 2003)

⁴³⁶ Quan, J and Toulmin, C. 'Formalising and securing land rights in Africa: overview'. P. 2

According to Cotula et al,⁴³⁷ four major arguments presented by land titling and registration apologists are as follows;

- i. Land registration stimulates a more efficient use of the land, because it increases tenure security and removes disincentives to invest in the longer-term management and productivity of the land;
- ii. Land registration enables the creation of a land market, allowing land to be transferred from less to more dynamic farmers and consolidated into larger holdings;
- iii. Land registration provides farmers with a title that can be offered as collateral to financial institutions, thereby improving farmers' access to credit and allowing them to invest in land improvements;
- iv. Land registration provides governments with information regarding landholders and size of fields, which can provide the basis for a system of property taxes.⁴³⁸

It was these arguments that prompted the unprecedented surge in the adoption of various forms and degrees of land titling and registration programmes and attempts at converting customary tenurial rights into private ownership by post-independent sub-Saharan African states and their governments.⁴³⁹ Unfortunately, the practical reality on ground shows that only very small amount of African land has been registered as private property.⁴⁴⁰ In some instances, the final outcome of land titling and registration exercises may be the converse of the expected benefits. Andrew Smith,⁴⁴¹ in his report on the unsavoury experiences in Nigeria noted that;

Several state or local level land registration projects have been implemented over the last ten years [in Nigeria] but little demonstrable impact can be

⁴³⁷ Cotula, L., et al., 'Land Tenure and Administration in Africa'. P. 3

⁴³⁸ Ibid.

⁴³⁹ Kenya, Ghana and Nigeria have at different points in time embarked on various ranges of land titling and registration exercises.

⁴⁴⁰ Byamugisha, F. F. K, 'Securing Africa's Land for Shared Prosperity: A Program to Scale Up Reforms and Investments. Africa Development Forum series'. (2013) Washington, DC: World Bank. P. xv.

<<https://openknowledge.worldbank.org/bitstream/handle/10986/13837/780850PUB0EP100LIC00pubdate05024013.pdf?sequence=1&isAllowed=y>>. Accessed 30/05/2018.

⁴⁴¹ Andrew Smith, Forging the link between land registration and job creation. A spatial economic growth model for Kano state, Nigeria. Paper presented at the "2017 World Bank Conference on Land and Poverty", the World Bank- Washington DC, March 20-24, 2017. Background, p. 4. <file:///C:/Users/USER/Downloads/09-11-Smith-498_paper.pdf>. Accessed 20/05/17

observed on the land administration system itself or the economy. The primary goal of delivering land title [may] has generally been achieved but weak institutional capacity has failed to catalyse change in the mortgage market or access to finance as proposed by de Soto et al and improvements in the formal land market have not materialised. Frequently, subsequent transactions of parcels registered within the computerised land record generated through regularisation remain tied to antiquated paper-based systems. This immediately reintroduces the problems of delay, rent seeking and opaque, discretionary based decision making.⁴⁴²

It should be noted that it is impossible to register allodial title to land in Nigeria in the true sense of it because all lands in Nigeria are nationalised.⁴⁴³ Lands in Nigeria are subject to the doctrine of “eminent Domain” and taxation, even as governments assume the responsibility of a trustee. Nigerians enjoy only usufructuary right to land and can only register deeds which only serves as proof of evidence for right of use. This confers neither title to the person on whose name the land is registered nor guarantee security of tenure.

In addition, recent time land titling and registration policy measures across African continent have encountered some peculiar constraints which statutory legal provisions appear ill-equipped to handle. These constraints range from the States’ rights of absolutism over land ownership and other mineral deposits which in most cases arise as a result of African States’ nationalisation of lands within their territories, thus vesting the ultimate rights on the States. Irrespective of the above, the practical reality on ground remains that land rights in Africa often evolve from historical occupation of a given areas or parts of the State by a given set of ethnic or tribal people. There is always challenges arising from the inability to alienate lands to strangers outside the confines of these local groups.⁴⁴⁴ There is also concerns arising from the complex nature of overlapping land holding practices in Africa. These challenges are clearly captured by Julian Quan et al thus;

African land holding in practice is frequently characterised by complex, overlapping sets of individual and collective rights, including secondary or

⁴⁴² ibid

⁴⁴³ section 1 of the 1978 Land Use Act of Nigeria. <<http://www.nigeria-law.org/Land%20Use%20Act.htm>>. Accessed 01/12/17

⁴⁴⁴ Quan, J and Toulmin, C. ‘Formalising and securing land rights in Africa: overview’. P. 5

derived rights created through customary transactions and inheritance. This creates restrictions on the extent to which land rights can be individualised in practice, without undermining certain rights which have been socially established as legitimate. These problems are reflected in a range of practical difficulties experienced by land titling and registration programmes.⁴⁴⁵

To put this succinctly, “it is impossible to bring to the adjudication register all the multiple rights claimable under customary law”,⁴⁴⁶ particularly the secondary and socially negotiated land rights that mostly relied upon by women and other vulnerable groups. In view of the above, it has been argued that while land titling and registration were always proposed as the sure panacea for combating disputes and other tenurial related controversies, its adoption, at least at the inception, may end up acerbating the very concerns it was meant to resolve, particularly, where central registration systems were adopted which may cause a rise in land grab cases. Some well to do members of the society may seek to lay claims over lands customarily owned by women and the poor members of the society in anticipation of titling and registration exercises. While some uneducated members of the society without access to information and contacts may discover that the land which they hoped was theirs has already been registered by someone else. Land titling and registration is disadvantageous to secondary rights holders, particularly women, pastoralists, hunter-gatherers, low caste people, former slaves and serfs, and people from minority tribes who have traditionally enjoyed and depended on secondary rights to land for their survival, and whose subsidiary rights are not reflected on the registration documents.⁴⁴⁷ More so, the costs involved in land registration and titling is always a big concern to small land holders. This same costs and administrative bottlenecks inherent in many land titling and registration exercises make it difficult, if not impossible to register every new land transfer, thereby making the land register outdated.⁴⁴⁸

The success or otherwise of most of the land titling and registration programmes across Africa are often measured based on the number of parcels of land covered in relation to the per unit cost of the projects. Whereas this may in many instances meet the

⁴⁴⁵ Ibid.

⁴⁴⁶ Jean-Philippe Platteau; Does Africa Need Land Reform?, in Toulmin C and Quan J. F (ed) *Evolving Land rights, Policy and Tenure in Africa*. (DFID/IIED/NRL. London 2000) P. 66/67

⁴⁴⁷ Ibid.

⁴⁴⁸ Cotula, L., et al., ‘Land Tenure and Administration in Africa’. P. 3

expectations of service providers and donor agencies, it has been revealed that this approach often falls short of addressing the fundamental concerns that gave rise to reform demands at the first instance, which often comprises the need for improved good and equitable land management and governance; improved livelihood and the eradication of all forms of institutional bottlenecks and societal discriminatory practices that inhibit growth and development. However, whereas the goal of generating reliable database of land ownerships which would in turn guarantee verifiable and secure land tenure regime and improved agricultural investments may have been achieved in few instances through land titling and registration, other benefits like improved planning capabilities, gender sensitive tenure regime, elimination of poverty and employment generation which often are hoped to be achieved as a result of the land titling and registration programmes often appear elusive.⁴⁴⁹ Though reports from Thailand⁴⁵⁰ and Somalia revealed that title registration led to increased tenure security particularly for larger farmers with high values who were able to gain access to credits, boosted the confidence of farmers, increased the security of lenders and engendered positive influence on investments. However, the same registration exercise equally resulted in the displacement of existing land holders, led to further subjugation of women, and was disadvantageous to small land holders who are ignorant of the government imposed bureaucratic constraints and too poor to meet the cost of the registration exercise.⁴⁵¹ Consequently, these are only little demonstrable evidence with mixed outcomes, and are insufficient to suggest that registered land rights are prime catalysts that would guarantee robust and sustainable rural economic boom for all as projected by De Soto.⁴⁵²

More so, it is highly simplistic and erroneous for De Soto to see and measure the value of land only from the narrow prism of economic prosperity, because the meaning of land to many rural or traditional Africans go far beyond its objectification as a

⁴⁴⁹ Andrew Smith, 'Forging the link between land registration and job creation. A spatial economic growth model for Kano state'. P. 4

⁴⁵⁰ Yaro, J. A. 'Customary tenure systems under siege: contemporary access to land in Northern Ghana. P. 202- 203

⁴⁵¹ Michael Roth, M. J., Unruh, and R. Barrows. 'Land Registration, Tenure Security, Credit Use, and Investment in the Shebelle region of Somalia', in J. Bruce and S. Migot-Adholla (ed), *Searching for Land Tenure Security in Africa*. (1994). Dubuque, Iowa: Kendall/Hunt Publishing.

<<file:///C:/Users/USER/Documents/2804310paper.pdf>>. Accessed 06/02/18

⁴⁵² Andrew Smith, Forging the link between land registration and job creation. A spatial economic growth model for Kano state'. P. 4

repository of value. For instance, land remains an indispensable “social security of last resort for the Igbos” of the Eastern Nigeria.⁴⁵³ Land in many African communities also has spiritual connotations which can never be quantified in monetary value. Land is still being worshiped in some rural African communities till date and provides home for not only the living, but their ancestors as pointed out in chapter two of this paper. It should be recalled that to many African communities, “land belongs to a vast family of which many are dead, few are living, and countless members are still unborn”.⁴⁵⁴ Land titling and registration, from this view point, attempts to sever the strong spiritual ties that most members of traditional African communities share with their ancestors.

It is instructive for practitioners to be cautious of De Soto’s projection of “land titling” as the ultimate panacea against tenure insecurity and rural poverty considering its evidential burden. The reality is that we face a situation where readers and poor rural dwellers are encouraged to accept on faith that titling represents the assured gateway to their economic emancipation, a leap to the unknown which many found themselves unwilling to undertake.⁴⁵⁵

It is equally instructive to interrogate how successful the adoption and implementation of the land titling and registration exercise has been in Peru where De Soto headed the land formalization programme himself. Empirical report from Peru deflates and defiles De Soto’s economic boom prognostication.⁴⁵⁶ Reacting to the inability of the Peru’s land titling programme to yield the much-expected positive results, Van Der Molen stressed thus;

We believe also this aspect constitutes a problem of evidence for de Soto’s theory. The reader of the book expects that -at least- in de Soto’s own home country, being involved himself in the formalization projects, some form of

⁴⁵³ Emeasoba, U. R.B. ‘Land Ownership among the Igbos of South East Nigeria. P. 98

⁴⁵⁴ Makar T, *The History of Political Change among the Tiv in the 19th and 20th Centuries*. P. 36-37.

⁴⁵⁵ Van Der Molen, ‘After 10 Years of Criticism, what is Left of De Soto’s Ideas’. (2012) p. 7.

<https://www.fig.net/resources/proceedings/fig_proceedings/fig2012/papers/ts07b/TS07_B_vandermolen_5503.pdf>. Accessed 15/10/2018

⁴⁵⁶ Ricardo Fort, ‘Assessing the Impact of Rural Land Titling in Peru: The Case of PETT Programme. Paper to be presented at the World Bank Conference on New Challenges for Land Policy and Administration’, 14-15 February, 2008 Washington D.C. P. 10-11 and 21. <http://siteresources.worldbank.org/INTIE/Resources/475495-1202322503179/TitlingPeru_RFort.pdf>. Accessed on 15/10/2018

evidence can be built for the validity of the theory. Now the reader fears: when it is not quite successful in Peru...why would it do work elsewhere?⁴⁵⁷

Generally, reports from title registration exercises across African continent have consistently revealed the inability of these state initiated and market-led programmes to achieve the stated goals. Title registrations in Africa have resulted in increasing land related conflicts, precipitated the concentration of tenurial rights in the hands of the well to do or privileged members of the society and the political class, and encouraged patriarchy by default as it mostly secure and consolidate on already existing discriminatory tenure arrangements which are skewed against women and other vulnerable members of the society. A compilation of researches on title registration projects across African continent which was edited by Bruce, J. and S. Migot-Adholla revealed compelling evidences that point to the futility of relying on title registration as the guarantor of security and ultimate catalyst for economic boom and rural emancipation.⁴⁵⁸

African customary laws are not static, and the responsiveness of African societies to economic and developmental initiatives are often conditioned by social realities, particularly the level of household interdependence and the practical realities and nuances of their peculiar environments. Market-led interventions relying on the arguments against tenure insecurity as a launch pad for tenure change often generate more problems than they solve. Thus, in a pluralistic continent like Africa with multifaceted challenges arising from complex socio-political, ethno-cultural and religious differences, endemic vulnerability and unimaginable human sufferings to widespread poverty, workable and sustainable approaches to land rights and policy measures ought to be more human oriented, reflect states and community peculiarities and less on De Soto's rigid economic boom prognostications.

5.3.2: LAND DECENTRALIZATION

The term "decentralisation" is often used to refer to a number of related policy measures that advocate for the transfer of governmental rights and responsibilities from the

⁴⁵⁷ Van Der Molen, 'After 10 Years of Criticism, what is Left of De Soto's Ideas'. P. 7.

⁴⁵⁸ Bruce, J. and S. Migot-Adholla, 'Searching for Land Tenure Security in Africa', in Bruce, J. and S. Migot-Adholla (ed), *Searching for Land Tenure Security in Africa* (1994). Dubuque, Iowa. Kendall/Hunt Publishing.

<<file:///C:/Users/USER/Documents/2804310paper.pdf>>. Accessed 06/02/18

national or central governments to the local institutions of administrations.⁴⁵⁹ Local institutions in the context of a country like Ghana can mean the “District Assemblies” and its subsidiaries, while in Nigeria, it can mean either the federating state units or the Geopolitical Zones and their subsidiaries.⁴⁶⁰ Such transfer of responsibilities to local institutions is an act aimed at empowering the local communities by the means of devolving political, administrative, financial, legal and many other functions from the central governments to the local level bodies. Determination and classification of decentralisation programmes can be ascertained by broadly looking at what functions that are to be decentralised or transferred from the central governments, and to which institutions are these powers being ceded- whether it is localised sub-offices of government agencies, end-user groups, established local authorities etc. the nature and composition of the recipient institutions in any decentralisation exercise determines its level of accountability, responsiveness and inclusivity.

The argument for land decentralization hinges on the assumption that local land practitioners and institutions have a better knowledge of the local needs, constraints and the definitive dynamics that shape local tenurial contents, and are more inclined to adopt more practical, people-oriented and sustainable approaches. This position is premised on the belief that local land administrators enjoy more access to grassroots information and can easily be held accountable to the local populace in the events of mismanagement or abuse. Local institutions and solutions are, in most cases, naturally and better positioned to tackle local challenges, especially when already existing institutions and arrangements are adopted, improved upon and strengthened to regulate access to rural resources and dispute resolution.⁴⁶¹

Reacting to the need for development of proactive, innovative and sustainable local-based tenurial policy measures and approaches that are consistent with some positive elements of the existing African customary institutions and socio-cultural values, Camila Toulmin and Julian Quan stressed that;

The approach to land policy and land rights need to be strongly human centred, and less driven by economic prescriptions than governments and donors have frequently allowed. Land policy and land law need to be more even handed in

⁴⁵⁹ Meinzen-Dick, R et al, ‘Decentralization, pro-poor land policies and democratic governance’. P. 1

⁴⁶⁰ The subdivision of Nigerian and Ghanaian states which will reflect the devolving institutions will be broadly explained later in this chapter.

⁴⁶¹ Bruce, John, ‘Decentralization of Land Administration in Sub-Saharan Africa’. P. 55

relation to the various stakeholders, particularly the poor [and the vulnerable]. This requires the recognition that imported western notions of property rights are not the only principles which may be appropriate in Africa.... African governments have been particularly subject to the ebb and flow of donor thinking about the importance of the land question and how it should be addressed. This has led to the exposure of African nations to changing views linked to broader shifts in the world view as they relate to the role of government, adherence to greater market orientation, and policy and academic debate led by western intellectuals.⁴⁶²

One major reason often adduced for the contemptuous view of customary institutions is that its process of establishment falls short of the principles of “constitutional democracy”. But formal parliamentary democracy is not necessarily the only way to achieve tolerance, justice, progress and sustainable development in the society. Fulfilment of legitimate claims and attainment of happiness are of greater importance to members of the communities than the processes of institutional birth.⁴⁶³ Thus, undermining local customary institutions on the grounds that most of them do not conform to the western democratic standards and ideologies is quite unfortunate, as the validation or otherwise of any institution ought to be weighed on the balance of its acceptability and ability to provide sustainable solutions to local challenges, the process of its constitution notwithstanding. Customary law and its institutions embody the condensed wisdom of generations in the living fabric of existence; valid because they are acknowledged by those under its jurisdictions.⁴⁶⁴ In other words, customary laws, just like their statutory counterparts, are contractual in nature; both lacks validity and die without popular acknowledgement.⁴⁶⁵ Thus, it has been said that “no written law has

⁴⁶²Quan, Julian. ‘Land Tenure, Economic Growth and Poverty in Sub-Sahara Africa’ p. 2

⁴⁶³ Peter Orebech, ‘The Place of Customary law in Democratic Society’, in Peter Orebech (ed) *The Role of Customary Law in Sustainable Development*. (Cambridge university Press, 2005) p. 289-291

⁴⁶⁴ Ibid. 297

⁴⁶⁵ Examples of this assertion could be seen from the natural death of several funeral rites and widowhood practices of Igbo people of Eastern Nigeria. The widowhood burial right that compels widows to shave off their hairs, wear black mourning cloths and be caged for months have all frazzled out of existence due to lack of support. Also, the custom of widowhood inheritance which was formerly a common tradition among the Igbos became so unpopular and less acknowledged by members of the Igbo community. Thus, these customs died off not because of statutory proscriptions and judicial clampdown but for lack of support and acknowledgement. Though, it should be noted that enlightenment and the fear of HIV/AIDS also helped to drive widowhood

ever been more binding than unwritten custom supported by popular opinion”.⁴⁶⁶ This position was echoed by Jeb Bjarup⁴⁶⁷ as he states that;

Immemorial custom is observed as a statute, not unreasonably; and this is what is called the law established by usage. Indeed, inasmuch as statutes themselves are binding for no other reason than because they are accepted by the judgement of the people, so anything whatever which the people show their approval of, even where there is no written rule, ought properly to be equally binding on all; what difference does it make whether the people declare their will by their votes, or by positive acts and conduct.⁴⁶⁸

Unfortunately, conventional paradigm apologists often do not recognise the existence of these undeniable rural realities in their hurried quest to promote or impose “modern” institutions such as the western legal and administrative frameworks as the ultimate panacea with universal applicability.⁴⁶⁹ The potency and deep reaching effects of traditional or local institutional recognition is never lost on the rural communities whose livelihood needs improving, as “improvement”, to some rural dwellers, might transcend the narrow confines of income and wealth, to include quality of life and society, security and dignity. But one should be careful not to fall into the snare of romanticism while advocating for local institutional recognition as they are often neither the quintessence of equity, justice and rural development. For instance, many traditional or chieftaincy institutions in Nigeria are patrilineal in nature that women are not allowed to assume traditional leadership positions on the ground of their gender as analysed in chapter two of this paper. This informed the position of the Nigerian Supreme court in *Mojekwu v. Iwuchukwu*, where the apex court overruled the earlier pronouncement by the Appeal

inheritance custom into extinction as many would be male beneficiaries and their direct families (particularly wives) kicked against the possibility of inheriting the widows of deceased relatives whom they may not know the actual cause of death or HIV/AIDS status, even when such widows were ready to willingly offer themselves up for such inheritance. This custom has equally been reported to be in the decline in Ghana for similar reasons. See Jeanmarie, F and Tracy E. Higgins ‘Promise Unfulfilled: Law, Culture and Women’s Inheritance Rights in Ghana’. (2002) Fordham Intl. Law Journal. Vol. 25. P. 279

⁴⁶⁶ A popular quote by Carrie Chapman Catt

⁴⁶⁷ Jeb Bjarup, ‘Social Interaction: The Foundation of Customary Law’, in Peter Orebech (ed), *The Role of Customary Law in Sustainable Development*. (Cambridge university Press, 2005). P. 139

⁴⁶⁸ Ibid.

⁴⁶⁹ Andrew Shepherd; *Sustainable Rural Development* (Macmillan Press Ltd, 1998). P.

Court which declared the discriminatory customary practice that deny women's inheritance rights as repugnant to natural justice, equity and good conscience.⁴⁷⁰

However, it should also be noted that the response to the recognition or otherwise of pre-existing local institutions accounted for the mixed results recorded by the indirect rule system of administration of the British colonial authority in West Africa. The huge successes of the indirect rule system as recorded in the northern parts of Nigeria and Ghana, - particularly within the Muslim communities where there existed well-structured monarchical emirates and caliphates- could be attributed to the recognition of these traditional institutions as the major authorities within their sphere of jurisdictions, subject only to the colonial administration. These local institutions were further empowered and coordinated by the colonial authority to administer local challenges for efficient service delivery. Indirect rule system, however, was not much of a success in the southern parts of Nigeria and Ghana due to either non-availability or outright disregard to the existence of the traditional institutions of authority. It was particularly a monumental failure among the acephalous Igbo communities of the Eastern Nigeria because of the absence of visible and centralised traditional leadership structures and authorities.⁴⁷¹ The smooth and successful operation of traditional institutions in this circumstance, however, requires the establishment of legislations that would empower and regulate the operations of these local authorities within the ambit of the national statutory and regulatory framework.

Within various communities in Africa- Nigeria inclusive, land administration could be said to have already been ineffably decentralised as varying degrees of tenurial administrative powers and control are being enjoyed or exercised by local authorities in accordance with the customs and traditions of the rural communities, albeit with or without authorisation or recognition within the ambit of most national statutes or central governments.⁴⁷²

Meanwhile, across African continent, there exist various challenges and confusions on what constitutes decentralisation, as the term "decentralisation, has also been used to refer to reforms and programmes that were created with the aim of either maintaining,

⁴⁷⁰ *Mojekwu v. Iwuchukwu* (2004) 4, S. C. (pt.11)

⁴⁷¹ Asaju, K, 'Local Government Autonomy in Nigeria'. p. 103.

⁴⁷² Byamugisha, Frank F. K., 'Agricultural Land Redistribution and Land Administration in Sub-Saharan Africa'. P. 8-9

strengthening or scaling up central governments hegemony over rural resources.⁴⁷³

There are also instances in which the control over natural resources are vested in various local institutions whose compositions do not allow for practical downward accountability. The limited amount of authorities granted to some of these local institutions make discretionary and innovative experimentations impossible, even as the creation of participatory, all-inclusive and sustainable rural institutions become a mirage. Thus, the inability of many decentralisation programmes in Africa to yield the expected benefits.⁴⁷⁴ A clear example of this could be seen from the decentralization of governmental powers in Nigeria between the central government in one part, and the states and local governments on the other hand. Sections 7 and 8 of the Nigerian Constitution⁴⁷⁵ vests the power to not only create, manage and control the activities of Local government authorities, but also the power to conduct elections into its elective posts on the state governments. Such an undue power makes Local Governments in Nigeria subservient to the whims and caprices of the State executives. In many instances, state governments refuse to conduct elections into the offices, instead, they appoint “caretaker officers” made up of party loyalists and associates to pilot the affairs of the local councils even as they appropriate the development funds meant for rural developments. The establishment of “State/Local Government Joint Account” has also exacerbated this situation,⁴⁷⁶ thereby grossly undermining local government autonomy and its ability to meet local needs, reflect local sentiments and resolve local challenges.

Therefore, the success or otherwise of any land administration decentralization exercise will largely depend on the composition and implementation of such programmes. Obviously, local authorities are not necessarily more efficient, prudent, democratic, sustainable or more accountable than the national authorities, neither are they omniscient. There are obviously areas of land administration and management where local authorities will be ill-equipped to handle; particularly in situations where high technological advancements/ technical-know-how and uniform standardization for

⁴⁷³ Oyugi, Walter O. ‘Decentralization for good governance and development: The unending debate’, (2000) Regional Development Dialogue, Vol. 21, No. 1, Spring, p. 10

⁴⁷⁴ Ribot, J. C, ‘Local Actors, Powers and accountability in African Decentralisation: A Review of Key Issues’. (2001) Paper prepared for IDRC Canada, Assessment of Social Policy Reform Initiative, World Resource Institute, Washington DC, p. 3.
<[http://www.unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)/3345AC67E6875754C1256D12003E6C95/\\$file/ribot.pdf](http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/3345AC67E6875754C1256D12003E6C95/$file/ribot.pdf)>. Accessed 20/11/17

⁴⁷⁵ See sections 7 and 8 of the 1999 Constitution of the federal Republic of Nigeria.
<<http://www.wipo.int/edocs/lexdocs/laws/en/ng/ng014en.pdf>>. Accessed 15/01/2018.

⁴⁷⁶ Asaju, K, ‘Local Government Autonomy in Nigeria’. P. 106-110.

efficient service delivery are needed.⁴⁷⁷ However, local institutions should be allowed considerable degree of discretion within the ambit of the national regulatory powers to operate and innovate in ways that would be beneficial to the local populace. They should not be structured in such a rigid manner that would only replicate the statutory attributes of the central authorities, rather, should be allowed to reflect the evolving and flexible attributes that define African custom and traditions.

No form of tenure decentralization could be said to be omniscient or fit for all purposes. Countries like Ghana, Ethiopia, Tanzania and Uganda have at various points adopted different approaches to their decentralisation exercises in accordance with their societal peculiarities and events that informed such demand. However, no matter a country's preferred approach to the decentralisation exercise, some general and fundamental elements must be given due considerations. These elements include the actual roles that are decentralised and on whom they are vested; the interaction between the decentralised tenure management institutions and the higher authority; the interaction between decentralised tenure institution and other local tenure management bodies; the extent to which the decentralization is a de-concentration or a devolution of authority, and lastly, the sustainability of the systems as it relates to their management and finances.⁴⁷⁸

5.3.3: LAND NATIONALIZATION

Land nationalisation is a form of land administration in which the government divests the individuals, families, communities, villages and every other land holding groups within the state of absolute and outright ownership right to their land, leaving them with rights of use. The notion of land nationalisation presupposes the vesting of right of ownership of all land in the country in the hands of the government for the benefit of all. Nigeria and Ghana have at some points embarked on land nationalisation exercises. This remains the main attribute of the Nigerian Land Use Act of 1978 till date which divested all rights of land ownership from Nigerians, placing same on the government. This position was adumbrated by Kayode Eso JSC in *Nkwocha v. Governor of Anambra State* where he stressed that “the tenor of the Act as a single piece of legislation is the nationalisation of all lands in the country by vesting of its ownership in the state,

⁴⁷⁷ Byamugisha, Frank F. K., ‘Agricultural Land Redistribution and Land Administration in Sub-Saharan Africa’. P. 8

⁴⁷⁸ Ibid. p. 9

leaving the private individuals with an interest in land which is a mere right of occupancy”.⁴⁷⁹

5.4: Conclusion.

The continued existence of various discriminatory customary tenure systems across African states even in the face of the government preferred statutory and judicial regulatory approaches to the contrary is one major factor identified for the continued demand for reforms. Other factors identified during the above analysis include the need for the liberalization of African economies and the desire to put an end to historical social injustices occasioned by various colonial and post-colonial land expropriations, mass displacements and the associated conflicts. In addition, the increased demand and pressure on land occasioned by both demographic growth, urban expansion and foreign investments in agriculture, environmental degradations such as desert encroachment, flood and droughts, as well as changes in the socio-economic composition of the society which has undermined the capacity and smooth operations of the hitherto effective customary rules and traditional institutions such as the established emirates, caliphates and the Oba empires, Stools, Skins and other traditional authorities across African states have all jointly made reforms inevitable.

In relation to Nigerian and Ghanaian reform experiences, this chapter identified three major reform approaches that have formed the core of the countries’ reform experimentations. These reform approaches are Land Titling and Registration, Land Decentralisation and finally Land Nationalization. The core features, dynamics and outcomes of these land reform models were identified and examined, pointing out the perceived benefits and inherent constraints. Unfortunately, the continued existence of the tenure challenges and emergence of new constraints only points to the ineffectiveness of these reform approaches, even as some of them exacerbated the very problems they were meant to tackle. These obvious defects have informed the urgent and continued call for paradigm shift in land reform approaches across African continent in general, and Nigerian state in particular.

Haven analysed the definitive attributes and peculiar challenges associated with these selected land reform trends that have been, at one point or the other, adopted and implemented by different administrations within the preferred case studies (i.e. Ghana and Nigeria), it is now imperative that we examine the successes or otherwise of each of

⁴⁷⁹ *Nkwocha v. Governor of Anambra State & Ors.* (1984) 6 SC 362

these reform measures, as well as what factors that conditioned the outcomes of the reform experimentations. These will be examined from the historical point of view in relation to the Nigerian and Ghanaian land administration and reform experiences.

CHAPTER 6: LAND REFORM IN NIGERIA

6.1: INTRODUCTION

It is important for us to re-examine the narratives that led to the prevailing land tenure arrangements and land administration system in Nigeria from a historical point of view, and to unravel the reasons why calls for land reform particularly continues to reverberate across the length and breadth of the Nigerian landscape despite the recent Supreme Court's positive pronouncements on women land rights and efforts previously depicted towards land matter by both the colonial and post-colonial administrations within the state.⁴⁸⁰

Many land reform programmes have been carried out in Nigeria by different administrations with varying outcomes and implications. The heterogenous nature of the country precipitated the existence of pluralistic tenure arrangements in attempts to accommodate, respect and preserve the distinctive characteristics and the socio-cultural, ethno-tribal, linguistic and religious divides that characterise the Nigerian state. Thus, four major distinctive forms of land administrative and tenurial systems were operational in Nigeria prior to the introduction of the land nationalisation and unification exercise which gave birth to the Land Use Act of 1978. These were the tenurial arrangements under the Received English Law, tenurial rights under the State Land Law, Tenurial rights under the Land Tenure Law, and finally the indigenous tenurial rights under the customary law. Whereas two of the above tenurial arrangements had nationwide applicability, the other two conformed to the North-South dichotomy that characterised Nigerian state.⁴⁸¹

Thus, this chapter takes a holistic look at the historical antecedents of land administration and tenure systems in Nigeria, and the various reform programmes that have been initiated and carried out by various governmental administrations in relation to land ownership and its administration in Nigeria, with the intention of enthroning equitable, robust, just and secure land tenure model for the benefit of all. It examines the forms and characteristics of all land tenure and administration systems that have existed in Nigeria right from the pre-colonial era, through the

⁴⁸⁰ See Chapter 4 of this work for complete analysis of Supreme Court's recent positive pronouncements on women's land right in Nigeria.

⁴⁸¹ Oshio, E. P, 'The Indigenous Land Tenure and Nationalization of Land in Nigeria, 10 B.C. Third World L.J. 43 (1990), p. 44

<<http://lawdigitalcommons.bc.edu/twlj/vol10/iss1/3>.

period of colonial experimentations to the contemporary era of complex land regime, pointing out their problems and the inability of these reform measures to meet their expected goals. It thereafter took a particular look at the provisions of the Land use Act of the 1978 and the decision to nationalise all land in Nigeria, thereby leaving land owners with only right of use. It further examined the processes of its formulation and adoption, and how the Act's refusal to anticipate aspects of customary tenure provisions and the functionalities of pre-existing traditional institutions became its undoing.

Lastly, the chapter examined recent unsuccessful attempts at reforming the inequitable and ineffective Nigerian land administration system, and how this has informed the continued call for urgent land reform in Nigeria.

6.2: THE PRE-COLONIAL, COLONIAL AND POST-INDEPENDENCE TENURE SYSTEM AND REFORMS IN NIGERIA

A look down the historical lane would reveal the actions and developments that shaped the present tenure arrangements in Nigeria. To start with, the Uthman Dan-Fodio led jihadist war of conquest which was unleashed upon the Hausa tribe of the northern part of the present-day Nigeria by the Fulani invaders between 1804-1810 disrupted the indigenous customary tenurial rights of the indigenous Hausas. Following this Islamic conquest, feudal tenure arrangement was imposed on the indigenous Hausa communities, the concept of sharia law was also introduced as Fulani emirate established their lordship over the conquered lands under the leadership of the Emirs. It should be noted that all lands acquired in the past through conquest remain legitimate, inheritable and recognised. This position has been given judicial notice by the Privy Council in *Nwuba Mora v. H.E. Nwalusi*,⁴⁸² and upheld by the Nigerian Supreme Court in the case of *Echi v. Nnamani*.⁴⁸³

Meanwhile, following the formal establishment of the British colonial government's authority over the then Northern protectorate in 1900 and the introduction of the Crown Lands Proclamation Ordinance of 1902, all lands originally acquired by the Royal Niger Company (the body responsible for the administration of Northern Nigeria prior to the establishment of direct administrative rule over the territory by the British colonial authority in 1900) were ceded to the British colonial authority and were known as Crown lands.

⁴⁸² (1962) 1 All NLR 681

⁴⁸³ (2000) 8 NWLR (Pt. 667)

While the lands previously administered by the Fulani Emirs were also expropriated by the colonial administration and classified as Native Lands.⁴⁸⁴ This position was consolidated via the Land and Native Rights Proclamation of 1910. However, whereas the Governor holds all Crown land in trust for Her Majesty's government, native Lands were to be administered for the benefit of the Natives. These ordinances were later amended in 1916 and indigenised by the Northern parliament in 1962 after the Nigerian independence of 1960.⁴⁸⁵ Section 6 of this 1962 land law vested the power to grant rights of occupancy to natives on the minister.⁴⁸⁶ By virtue of this law, any one whose father was not from any of the indigenous tribes within the northern Nigerian enclave is regarded as a non-native.⁴⁸⁷ This position remained operational within the northern Nigerian region until the introduction of the Land Use Act in 1978.

The above scenario was completely different from what was obtainable within the southern part of Nigeria where land matters were regulated by the customary legal provisions deeply rooted in the customs and traditions of the indigenous people of the southern Nigeria. It should be noted that lands within the southern Nigeria has both economic, socio-political and religious connotations as it is regarded by the people as a sacred gift from God for the good and maintenance of all members of the communities dead or alive. Thus, it is generally believed that "land belongs to a vast family of which many are dead, few are living, and countless members are still unborn".⁴⁸⁸ The living only hold land in trust for the benefit of their dead ancestors, themselves and generations yet to come.

To the southerners, it was unthinkable that such a sacred gift of nature and veritable asset with complex web of ownership arrangements could be entrusted in the hands of single individuals whom circumstances, or greed may compel to sell parts of the assets to solve immediate personal challenges or for personal aggrandizement thereby depriving unborn generations their future source of livelihood and survival. Thus;

⁴⁸⁴ Kunle Aina et al, 'Land Law', National Open University of Nigeria. P. 8-9

⁴⁸⁵ Ibid. P. 8-10

⁴⁸⁶ Laws of Northern Region of Nigeria, Ch. 59, cited in THE LAWS OF NORTHERN NIGERIA 1069 (1963)

⁴⁸⁷ Oshio, P. E, 'The Indigenous Land Tenure and Nationalization of Land in Nigeria', p. 46

⁴⁸⁸ Ross Andrew Clark, "Securing communal Land Rights to achieve Sustainable Development in Sub-Sahara Africa. P. 132.

This inalienability of communal land was partly a consequence of the fluctuating and mythical constitution of the community, village or family, it was intended to protect the right of the unborn generation as well as the dead. It was considered an outrage against the departed ancestors whose spirit lay buried in the soil to sell the land, and an act of unwisdom to deficit the interest of the unborn.⁴⁸⁹

In recognition of the high premium placed on community inter-relationships, extended family lineages and kingship, land rights were vested on communities, villages and kingships, and never on individuals. This customary attribute was given legal backing in *Amodu Tijani v. Secretary of Southern Nigeria*,⁴⁹⁰ in which Viscount Haldane, in a bid to clarify and validate the status of the customary tenure system stated that "...the next fact which it is important to bear in mind in order to understand the native land law, is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual."⁴⁹¹ Alienation of land was foreign to the ideas, customs and traditions of the olden society. Therefore, rights of individuals over land was limited to use and the enjoyment of same only. No individual has the right to alienate any part of the land thereof in whatsoever form without the requisite consent of the village or family representatives.⁴⁹²

Heads of the families and communities were charged with the responsibilities of managing the lands and exercising rights of ownership on behalf of the families and communities, and in some loose characterisation, are often referred to as the owners. However, their positions are just like that of trustees, but not in the capacity trustees are perceived within the English law concept. Members of the families or communities with need for land for agricultural or residential purposes approach the heads of the families or communities for the permission to use the land. Such right was legally recognised, and where a member of the family or community feels that such a right has been unreasonably denied, the person is at

⁴⁸⁹ Prince Awari, Examining the Contemporary View that Customary Overlords and Customary Tenants is Unknown to Grundnorm for Land Administration in Nigeria'.(nd) <<http://www.lexadvocatus.com/2017/03/examining-contemporary-view-that.html>>.

Accessed 10/02/18

⁴⁹⁰ (1921) AC 399, 404

⁴⁹¹ *Eze v. Igiliege & Ors.*, 14 WCA 61

⁴⁹² Ibid.

liberty to approach the court for redress.⁴⁹³ The ownership of these lands can never either by effluxion of time or under any the circumstances be divulged from the group to become personal property of the members of these groups. The heads of the families or chiefs of the communities cannot dispose of any piece of land thereof without consulting the elders of the groups, particularly, when such permissions were to be granted to strangers as customary tenants.⁴⁹⁴ This idea of preserving land within the family and community units and its inalienability outside the confines of these allodial groups led to the emergence of different other subsidiary interests in land through which strangers and migrants could be allowed access to lands for cultivation and dwelling under special arrangements. Thus, families and communities prefer to give out their land to outsiders to use after observing some customary rights as the radical ownership right remain with the family or community. It was through this process that the ideas of customary and kola tenancies emerged.⁴⁹⁵

At the assumption of direct rule over Nigeria by the British colonial authority in 1900, the colonial government also introduced *the Native Land Acquisition Proclamation law of 1900* in southern Nigeria. In line with the then prevailing discriminatory customary principle that abhors foreigners' right to acquire land, this law also barred foreigners from acquiring interest in land from natives and aliens alike except through the written approval of the Governor. The difficulty encountered by the colonial government in their attempts to acquire lands for public and developmental purposes because of the customary principle of collectivism and inalienability of land, particularly to aliens, led to the enactment of the *Land Acquisition Ordinance (No. 9) of 1917* which gave the colonial government the right to compulsorily acquire land for public purposes.⁴⁹⁶ This marked the introduction of the doctrine of "eminent domain" in Nigerian legal

⁴⁹³ Oludayo Gabriel Amokaye, 'The Impact of Land Use Act Upon Land Rights in Nigeria', in Robert Home (eds) *Local Case Studies in African Land Law* (Pretoria University Law Press, 2011) 59 – 78. P. 61.

⁴⁹⁴ Oshio, P. E, 'The Indigenous Land Tenure and Nationalization of Land in Nigeria'. p. 47

⁴⁹⁵ Customary and kola tenancies are traditional tenurial relationships between landlord (customary overlord) and tenant (customary tenant), where the customary tenant pays tribute to the customary overlord and has the peaceful possession and use of the land in perpetuity until forfeiture or violation of terms of agreement. The concept of customary tenancy and kola tenancy is further explored in the later part of this chapter

⁴⁹⁶ Martin Dada, 'Nigeria Land Reform- the lingering debate'. AfricaFiles (2010) <<http://www.africafiles.org/article.asp?ID=22723>>. P. 12. Accessed 28/11/17

system; a concept that is still generating controversies in Nigeria till date as subsequent Nigerian governments often hide under its clauses to expropriate people's land without commensurate compensations.⁴⁹⁷

The high labour migrations resulting from colonial activities and developments thereof brought about unprecedented societal and institutional transformations which could not be sustained without land being alienated to strangers. As the society evolved over time, and political cum economic factors joined forces with colonial experimentations to shaped and re-shaped the environment, customary restrictions on the alienability of land particularly to aliens waned as individualism and private ownership of land evolved, and land eventually became alienable to foreigners in southern Nigeria, though collective ownership of land remained more prevalent.⁴⁹⁸ Unfortunately, some unscrupulous heads of families and community leaders usurped the opportunity presented by this development and started alienating group lands under their trust for their personal aggrandizements.⁴⁹⁹ Greed and racketeering became the order of the day, even as land speculators flood the market with dubious offers and manipulative entrapments. Litigations and land disputes increased astronomically as multiple sale of same land to many unsuspecting buyers became rampant. Some people were left with no other choice than to resort to violent acts in attempt to maintain their interest in land. There was also the problem of land fragmentation mainly occasioned by the customary right of inheritance which allows for the devolution of land to the deceased heirs at the demise of the land owner. The prohibitive cost of acquiring land also grossly affected government's developmental agenda and plan of actions.⁵⁰⁰ In view of the challenges high cost of land posed to governments developmental drives, the then

⁴⁹⁷ For example, section 34(5) of the 1978 Land Use Act of Nigeria empowers the state governments to revoke any undeveloped private individual land holding in the excess of half hectares and expropriate same for public use without the payment of any compensation. Similarly, though compensation is a constitutional right as enshrined under section 44(1) of the 1999 constitution of Nigeria, the constitution only made provision for payments on unexhausted improvements and never on the value of the land. Thus, the government is empowered by the constitution not to pay any compensation on any expropriated undeveloped land, while the Land Use Act forbids victims from recourse to the court to challenge such expropriation.

⁴⁹⁸ Oshio, P. E, 'The Indigenous Land Tenure and Nationalization of Land in Nigeria'. P. 49

⁴⁹⁹ *Re Hotonu* (deceased 1892) At p. 18 of Lagos: Reports of Certain judgements of the Supreme Court, etc (1884-1992)- Law Reports (Colonial). Nigeria A. Colonial Office Library, London. (As quoted in Elias, T. O, *Nigerian Land Law*, p. 72-73).

⁵⁰⁰ Martin Dada, 'Nigeria: Land Reform- the lingering debate'. P. 13

military government of Nigeria promulgated the *Public Lands Acquisition (Miscellaneous Provision) Decree* of 1978 to facilitate cheaper ways for government to acquire the desired land for public use and developments. However, in some cases where the government had succeeded in acquiring some of the needed land for public use using the leverages provided by the above decree, the accompanying litigations, disputes and communal clashes often reduce such acquisitions to a pyrrhic accomplishment.⁵⁰¹

Neither the lands in the Northern part of Nigeria with a different tenure system nor the Federal government or public lands were spared from this corrupt onslaught and callous profiteering that characterised land transactions in the then Nigeria. Governors dispossess members of the public of their lands and vest same on their preferred private individuals in contravention of the statutory provisions guiding the operation and execution of such actions.⁵⁰² Rich and powerful members of the society used their positions to forcefully and dubiously rob the poor and less privileged northerners of their lands,⁵⁰³ a trend that was not obliterated by the eventual introduction of the new land law.⁵⁰⁴ Government lands also were dubiously appropriated by the rich and powerful Nigerians as state functionaries allocate several parcels of public lands to themselves, their relatives and their cronies; a practice that has continued unabated in Nigeria till date.⁵⁰⁵ This unwholesome development prompted the Constitutional Drafting Committee of 1976 to observe thus;

It is revolting to one's sense of justice and equity that one person alone should own three or six or even more plots of state land in one state, when

⁵⁰¹ Ibid., 14

⁵⁰² Ereku v. Military Governor of Mid-western state (1974) 4 All NLR 695

⁵⁰³ Jegede, M. I, *Land Law and Development* (Lagos University Press, 1981) p. 37

⁵⁰⁴ The dubious dispossessory excesses of the government continued despite the introduction of the new land statutes. For instance, in Osho v. Foreign finance Corporation (1997) 6 NWLR (pt. 507) 14, p. E- f, the federal government dispossessed members of the community of all interests in their land under the pretext of overriding public interest, only to grant right of occupancy over same land to some private persons for them to carry out their private businesses

⁵⁰⁵ Sahara Reporters, 'How El-Rufai allocated Abuja land to Obasanjo family, Ngozi Okonjo Iweala and family members'. (2008)

<<http://saharareporters.com/2008/04/11/how-el-rufai-allocated-abuja-lands-obasanjo-family-members-ngozi-okonjo-iweala-and>>. Accessed 25/11/17. See also Donald Lochir; Indigenes warn EFCC to probe fraudulent land allocations. The Blueprint. <<https://blueprint.ng/indigenes-want-efcc-to-probe-fraudulent-land-allocation/>>. Accessed 25/11/17

others of comparable status have none. The inequality is more condemnable when it is remembered that a plot of state land, allocated to a person at a nominal price, represents thousands of naira [the Nigerian currency] of public funds sunk into its improvement and development.⁵⁰⁶

The committee also warned that if nothing is done urgently to arrest this social malady, the government will only be setting up the country for catastrophic failure. Both the Anti-Inflation Task Force of 1975 and the Rent Panel of 1976 also pointed to the problems and the dangers posed by these unwholesome practices in land administration in Nigeria, pointing out the catastrophic effects such would have on the future economic development and sustainability of the country should the government continue to tolerate and accommodate the ugly status quo.

Above developments made land reform inevitable and compelled the then military government of Nigeria to institute a Land Use Panel of enquiry to ascertain the remote and immediate causes of all the myriads of problems that characterised land administration and transactions in Nigeria. The points of reference for this land panel were among other things to undertake a holistic study of the various forms of land tenures arrangements, land uses as well as processes of land acquisition and dispositions with the aim of devising less complex and more organised alternative approaches; to examine the implications of adopting uniform land policy for the entire country; to consider the feasibility of introducing uniform land administration system for the entire country, and offer recommendations and possible guidelines on modalities for the implementation; and finally, to examine the appropriate steps necessary for future control of land uses, and the development of novel ideas that would streamline the ease of land acquisition to meet the land needs of the government, as well as the growing Nigerian population in both the urban and rural areas, with the aim of making appropriate recommendations.⁵⁰⁷

The outcome of this panel formed the grounds for the enactment of the Land Use Decree of 1978. However, it must be noted that though the majority report of this

⁵⁰⁶ Rep. of the Constitution Drafting Committee. xii (1976), cited in Oshio, P. E, 'The Indigenous Land Tenure and Nationalization of Land in Nigeria'. p. 50

⁵⁰⁷ The reports of the 1977 Land Panel Committee set up by the military government headed by Gen. Olusegun Obasanjo, as cited in Okpala, D. C. I, 'The Nigerian Land-Use Decree Revisited'. (1982) HABITAT INTL. Vol. 6, No. 516, pp. 574.
<[https://doi.org/10.1016/0197-3975\(82\)90024-8](https://doi.org/10.1016/0197-3975(82)90024-8)>. Accessed 04/12/17

panel warned against the possible extension of the state-owned land tenure system operational in the northern part of the country to the southern part in view of the peculiarities of the customary tenure system that operates within the southern region, the federal government acted on the recommendations of the minority report and nationalised all land in Nigeria through the Land Use Decree of 1978.⁵⁰⁸ This Decree was later re-designated an “Act” via the “Adaptation of Laws (Re-designation of Decrees etc.) Order of 1980. To prevent the Land Use Act from being easily altered or repealed by singular act of legislature, it was entrenched into the 1999 Constitution of the Federal republic of Nigeria by virtue of Section 315(d), thus making an ordinary statute extra-ordinary.⁵⁰⁹

6.3: THE NIGERIAN LAND USE ACT OF 1978; A BRIEF APPRAISAL

The main intentions behind the establishment of the Land Use Act of 1978 (hereafter referred to as “The Act”) was among other things to make land available to all Nigerians at affordable prices (their backgrounds and social status notwithstanding) to put an end to the rampant cases of land speculations and profiteering, along with the resultant disputes, loss of revenues and unnecessary litigations thereto; to streamline, simplify and unify land management, administration and ownership systems in Nigeria; and to generate revenue to the governments through land allocation and the processing of same, as well as make land easily available to the three tiers of government and their agencies at affordable rates for developmental purposes.

To achieve these laudable and revolutionary goals, the Act nationalised all lands in Nigeria by vesting the ownership and control of the lands on the government. It grants powers of administration to the federating units – i.e. states and local government authorities, leaving all individuals and communities with usufructuary rights only. According to Obaseki JSC, “the Act swept away the unlimited rights and interests that Nigerians had in their lands and substituted them with limited rights and control of use rights by the Governors and the Local Governments”.⁵¹⁰ Thus, section 1 of the Act provides that;

⁵⁰⁸ For further analysis of the Land Use Act, see chapter 3 of this paper. Also, the elements of the Land Use Act relevant to this chapter will be further discussed below.

⁵⁰⁹ Smith, I. O, *Practical Approach to Law of Real Property in Nigeria*. P. 472- 473

⁵¹⁰ Per Obaseki JSC in *Savannah Bank (Nig) Ltd v. Ajilo* (1989) 2 NWLR (Pt. 97) 305

Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.⁵¹¹

Above provision has generated divergent opinions and interpretations from legal scholars and practitioners. To some, the Act only vests the powers for the management and control over all lands in each state of the federation on the Governor of the state to hold in trust, and administer same for the use and common benefit of Nigerian people.⁵¹² Eso JSC in *Nkwocha v. Governor of Anambra state*,⁵¹³ argued that “the tenor of the Act is the nationalisation of land in the country by vesting of its ownership in the state, leaving the private individual with an interest in land which is a mere right of occupancy”.⁵¹⁴ To him, the Act provides for unjust dispossession and nationalisation of peoples’ land by the state. However, others argue that the vesting of land to the Governor does not entail the abolition of existing titles and right of possession on land in favour of the state. As noted by Nnaemeka-Agu JSC, in *Ogunleye v. Oni*,⁵¹⁵ the Act did not set out to abolish all existing titles and rights of possessions. In relation to developed lands in urban areas prior to commencement of the Act, the possessor or owner of such a pre-existing right or title is deemed the statutory grantee of a right of occupancy in accordance to section 34(2) of the Act. Whereas in rural areas, the customary holder or owner is also deemed grantee of right of occupancy in line with the provisions of section 36(2) of the Act.⁵¹⁶ Thus, in *Hassan Doma Bosso v. Commissioner of Lands and Anor*,⁵¹⁷ the plaintiff averred that their customary title over the land which predates the inception of the Act subsists, and cannot be extinguished by the Governor’s subsequent grant of statutory right of occupancy to other individuals on the land without the payment of compensations to the customary right holders. This is so considering that the Act provided for non-

⁵¹¹ See section 1 of the 1978 Land Use Act of Nigeria. <<http://www.nigeria-law.org/Land%20Use%20Act.htm>>. Accessed 01/12/17

⁵¹² Ibid.

⁵¹³ *Nkwocha v. Governor of Anambra state* (1984) 6 SC 362

⁵¹⁴ Ibid.

⁵¹⁵ (1990) 2 NWLR (pt. 135) 745 at 784

⁵¹⁶ Smith, I. O, *Practical Approach to Law of Real Property in Nigeria*. P. 475- 476

⁵¹⁷ 1 NSHC/MN/101/2002

revocation of vested rights unless such is done in accordance with the provisions of section 28,⁵¹⁸ compensation paid pursuant to section 29 of the Act⁵¹⁹ and section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria. To this effect, it is believed that the Governor, being a trustee of the land vested in him, only enjoys insignificant title ownership with the aim of accomplishing the objectives of the trust.⁵²⁰

In all fairness, the investment of all land in Nigeria on the Governors by the Act did not result in dispossessions or mass displacement of any kind. Also, it is erroneous for one to assume that the Act has divulged people of all other interests in land outside their right of occupation believing that such interest has been lost by virtue of the provisions of section 1 of the Act. Such an interpretation and assumption are often reached in isolation of the later part of section 1 of the Act which limits the Governors power to that of a trustee. The concept of trusteeship is well established within the ambit of Nigerian land management as family heads and community leaders hold such positions for the members of their groups in whom the actual power and right of ownership resides. Thus, the native land holding rights remain unfettered despite the provisions of the Act, leading to the assertion that "...the Act which appeared like a volcanic eruption is no more than a slight tremor".⁵²¹ It could be inferred from the foregoing that the provisions of section 1 of the act only created a bare trust and nothing more, as it left untouched the customary land holders' rights to the enjoyment of tributes.⁵²² The actual effect of section 1 of the act is the expropriation of radical title in the form of absolute ownership by the governor subject to the other provisions of the Act that preserve existing interests in land.⁵²³

⁵¹⁸ Section 28 of the Land Use Act of 1985 provides that "It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest". It went on in sub-sections (1-7) to define what constitutes overriding public interest.

⁵¹⁹ section 29 of the Land Use Act provides that if right of occupancy is revoked for the reasons set out in section 28, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements

⁵²⁰ Smith, I. O, *Practical Approach to Law of Real Property in Nigeria*. P. 475

⁵²¹ Muhammad B. N. and A. U. Aliyu, 'Compulsory Acquisition of Communal Land and Compensation Issues: The Case of Minna Metropolis'. (2009) TS 7E – Compulsory Purchase and Compensation and Valuation in Real Estate Development. P.7.

<https://www.fig.net/resources/proceedings/fig_proceedings/fig2009/papers/ts07e/ts07e_nuhu_aliyu_3383.pdf>. Accessed 06/02/18

⁵²² Ibid.

⁵²³ Smith, I. O, *Practical Approach to Law of Real Property in Nigeria*. P. 476

Section 34(5) of the Act also contains further encroachment on the tenurial rights of individuals as it gave state governments the power to dissolve private rights in individual undeveloped land holdings exceeding 0.5 hectares in urban areas and expropriate same for public use without compensation. The only exception being lands owned and administered by the Federal Government or its agencies.⁵²⁴ However, whereas the Governor of each State reserves the right to administer and control lands situated in the urban areas, heads of the Local Governments (otherwise known as chairmen) have the rights to administer customary tenure arrangements within its jurisdictions.⁵²⁵

The Act did not define what constitutes an urban or rural area, however, the Governor of each state has the discretionary power to designate or re-designate any part of the state as urban area via an order published in the official gazette. The Governor also has discretionary power to rent, levy or waive a fine as well as grant right of occupancy to persons both in the rural and urban areas at the fulfilment of stipulated statutory conditions by the person(s) involved, or even revoke same for overriding public interests with or without the payment of compensations as the case might warrant, while heads of Local Governments have rights to grant or revoke customary rights of occupancy with respect to rural lands only.⁵²⁶ Any land transaction conducted without the consent and approval of the Governor or the Chairman of the local authorities in respect of rural lands are deemed null and void.⁵²⁷ Regrettably, the Act elevates itself above every other law in Nigeria, and prohibits aggrieved persons from challenging in court the Governors' and heads of Local Governments' discretionary powers to grant or refuse the grant of right of occupancy even when such actions are perceived to be discriminatory and self-serving.⁵²⁸ This element of the Act elicited criticisms as the Act was accused of arrogating to itself the status of a "supreme overlord". Reacting to the above unsavoury element of the Act, Layi Babatunde Esq stressed that;

The creation of Trust relationship all over the civilized world is a voluntary act of its creator. It is an office of confidence and strict

⁵²⁴ The 1978 Land Use Act of Nigeria, section 49.

⁵²⁵ Ibid. sections 5, 6 and 28

⁵²⁶ Ibid.

⁵²⁷ Ibid., sections 21, 22, 23 and 34

⁵²⁸ Ibid., section 47

accountability. A trusteeship is an office of very high fiduciary responsibility, which can never or should never be assumed by force of arms as under the Land Use Decree. This bulldozer of a Decree, enacted without proper consultations, vests ownership and management Rights over other people's land in a "stranger element" whose only qualification is that of overlord Here lies the fallacy of this fake trusteeship created under section 1 of the said Decree. ... A forced trust with powers vested on the Trustee to convey trust property to any one he pleases, including himself, without question, must by common sense be bizarre and monstrous indeed. In the circumstance, there is the urgent need for the Constitution Debate Committee to take a very close look at this Decree, as it presently stands. The Decree needs to be either abrogated or moderated.⁵²⁹

The court of Appeal, in an attempt to restore the fundamental right of Nigerians to challenge unfounded governmental expropriations and infraction of their property rights, boldly declared in *Lemboye v. Ogunsuji*⁵³⁰ that the provisions of section 47 of the Act was inconsistent with the sections 1, 4(2), 4(8) and 6 of the Nigerian constitution. This position was also followed in *Kanada v Governor of Kaduna state & Ors.*⁵³¹ The Supreme Court also ruled in both *the Nkwocha v Governor of Anambra State* mentioned earlier and in *Dada v Governor of Kaduna state*⁵³² that the Land Use act cannot override the proprietary rights of Nigerians as made provision for by the constitution.

State Governments and Local Authorities are to be assisted by the "Land Use Allocation Committee" and the "Land Allocation Advisory Committee" respectively in carrying out their statutorily assigned duties.⁵³³ Unfortunately, four

⁵²⁹ Layi, Babatunde, 'The Future of the Land Use Decree', p. 220- 226

⁵³⁰ See *Lemboye v. Ogunsuji* (1990) 6 NWLR (Pt. 155) 210. It must be noted however that the supreme court has so far refused to make any specific pronouncements on the non-justiciable position of section 47 of the Land Use Act in contravention of the provisions of sections 1, 4, 6 and 236 of the Nigerian constitution. Though it has declared in *Nkwocha v. Governor of Anambra state* (1984) 6 SC 362- 404 and *Dada v. Governor of Kaduna state* (1985) NWLR 687 that the Land Use Act cannot override the express provisions of the constitution that seeks to protect the proprietary rights of Nigerians.

⁵³¹ (1986) 4 NWLR (Pt 35) 361

⁵³² (1985) NWLR 687

⁵³³ The 1978 Land Use Act of Nigeria, section 2 (3) – (5)

decades after the statutory provision for the creation of these land administration institutions, some states in Nigeria are yet to create these land administration bodies, let alone assign them with the stipulated statutory responsibilities.⁵³⁴ However, the courts, through these pronouncements, established clear precedence upon which undue expropriations can be challenged before the competent court of justice.

With respect to indigenous tenure practices, the Act did not dignify such practices with even a mention. However, it is implied that the customary tenure system operational within the southern part of Nigeria was recognised and preserved by the Act. The Act preserved the customary rights of inheritance, and expressly exempts same from its clause which prohibits further partitioning of land at the demise of the occupier of the land.⁵³⁵ In circumstances where the revocation of communal lands attracts payment of compensations, the Act directs the Governor to make such payments to the heads of the communities or the chiefs for onward redistribution to the members of the group in accordance with their customs and traditions.⁵³⁶ This is done in recognition of the fact that chiefs or local heads are the custodians of common properties and holds same in trust for the benefit of the members of the communities.

Four decades after the promulgation of the Act, the actualisation of its set objectives seem a mirage. Instead of solving the problems and challenges it met on ground, the Act has exacerbated some of the problems and created new ones. Though, population growth, property market development and urban encroachment, increase in competing demands for land for conservation, developments, agriculture and pastoralism, natural disasters like draught, flooding and desert encroachments, population mobility, globalisation and its resultant corporate investments in land by international investors and many other emerging developments have placed more pressure on the available land, thus making land in Nigeria increasingly more contentious. All the above have jointly placed more

⁵³⁴ Bimer, Regina and Okumo, Austen, 'Challenges of Land Governance in Nigeria: Insight from a Case Study in Ondo State'. (2012) Institute of Agriculture and Social Science in the Tropics and Sub-Tropics. Hohenheim University, Stuttgart, Germany. P. 31. <http://www.landandpoverty.com/agenda/pdfs/paper/birner_full_paper.pdf>. Accessed 19/01/2018.

⁵³⁵ Ibid., section 24 and 25

⁵³⁶ Ibid., section 29

strain on the land debate in Nigeria, and by extension, make the achievement of the goals of the Act more cumbersome.

However, the biggest part of its undoing manifests in its inability to address and reconcile issues relating to customary tenurial arrangements that exists within the western, South-Southern and particularly Eastern parts of Nigeria. The customary tenure holdings that exist in the southern part of Nigeria, particularly, the customs and traditions of the Igbo people of the Eastern Nigeria is characterised by complex and overlapping tenurial arrangements which evolved through centuries of customary transactions and experimentations. Some of its definitive elements seem too complex, dynamic and vague for modern statutory tenure system to comprehend and accommodate.⁵³⁷ Tenure relations of this nature remain readily available in many rural communities and constitute the bulk of the land rights mostly available to many low-income earners, rural dwellers, as well as the vulnerable members of the society like women and children. Unfortunately, these customary land rights often remain unrecognised in numerous conventional land administration systems. This remains so despite the fact that these traditional models and social tenurial arrangements play important roles and provide various degrees of security to the practitioners who are obviously in the majority.⁵³⁸ Unfortunately, the chances of the prevailing paradigm scaling up to engage those excluded by the conventional statutory and administrative system, particularly the poor and most vulnerable members of the society, are very slim.⁵³⁹ This reality was also acknowledged by Lemmen Christiaan et al as they noted that “While many tenure rights are defined in formal laws, there are often other rights that are not similarly defined, but yet people use them every day because they are recognised by the local community and others. These rights enjoy social legitimacy even in the face of non-recognition or even legal proscriptions by the

⁵³⁷ The processes through which Kola tenancy evolved have been explained earlier in this chapter

⁵³⁸ Chigbu, Uchendu et al, *Tenure Responsive Land Use Planning: A Guide for Country Level Implementation*. (2017). P. 1. <https://gltn.net/download/tenure-responsive-land-use-planning-a-guide-for-country-level-implementation/?wpdmdl=8572&ind=1551276417226>>. Accessed 12/07/2018.

⁵³⁹ Enemark Stig et al, ‘Fit-For-Purpose Land Administration. (2014) Joint FIG/World Bank publication’. P. 9. <http://www.fig.net/resources/publications/figpub/pub60/Figpub60.pdf>. Accessed 15/07/2018

states.⁵⁴⁰ Some of these distinctive customary interests in relation to Nigerian land tenure system include Kola tenancy, customary or usufructuary mortgage, customary pledge and customary tenancy.⁵⁴¹

It should be recalled that these secondary tenure arrangements emerged in response to the inalienability of land outside the family and community confines as was the practice across most parts of the African continent before the commencement of colonialism. They are customary or traditional tenure creations aimed at extending to strangers and migrants, rights of access to land and possession of same in perpetuity for their livelihoods in communities where alienation of land outside family or community circles were discouraged, while preserving absolute ownership right for the family and community lineage. While describing the concept of customary tenancy, Oshio asserts that;

This tenancy has no equivalent in English law. It is not a leasehold interest, a tenancy at will, or a yearly tenancy. The principal incident of customary tenure is the payment of annual tributes, not rents, by the customary tenant to its overlord. In essence, the customary tenant is not a lessee or borrower, he is a grantee of land under customary tenure and holds a determinable interest in the land which may be enjoyed in perpetuity subject to good behaviour on the part of the tenant. He enjoys something like emphyteusis, a perpetual right in the land of another.⁵⁴²

Customary tenancy is an inheritable tenurial right capable of passing from generation to generation and is practiced within the South-East, South-South, South-West and North Central parts of Nigeria.⁵⁴³ The theory behind the development of customary tenancy stems from the arrival of migrants into communities where though strangers are highly welcomed and encouraged to stay but alienation of land to strangers were forbidden. Strangers were often provided with land for occupation and use. They are entitled to hold and enjoy the land in peace and perpetuity until they either willingly forfeit the right or violate terms of

⁵⁴⁰ Lemmen, Christiaan et al., ‘Guiding principles for building fit-for-purpose land administration systems in less developed countries: providing secure tenure for all’. (2016) World Bank Conference on Land and Poverty”, The World Bank- Washington DC, March 14- 18, 2016. P. 6

⁵⁴¹ Epiphany Azinge et al, *Restatement of Customary Law of Nigeria*. P. 233, 245- 250

⁵⁴² Oshio, P. E, ‘The Indigenous Land Tenure and Nationalization of Land in Nigeria’. P. 50- 51

⁵⁴³ Epiphany Azinge et al, *Restatement of Customary Law of Nigeria*. P. 247

the contract by alienating part of the land without prior consent of the overlord, fail to pay customary tribute or deny the overlord's title to the land.⁵⁴⁴ A tenant, on the other hand, cannot be made to suffer forfeiture due to minor act of misbehaviour.⁵⁴⁵ Forfeiture can be established by an order of the court at the instance of the customary overlord.⁵⁴⁶ Though payment of annual tributes has been one of the major preconditions for the establishment of customary tenancy contracts, however, it has been established that payment of tribute is not a condition precedent to the creation of valid tenancy under customary law principles, as non-payment of tributes is not inconsistent with customary tenancy institution.⁵⁴⁷ Once it is ascertained that the landowner has given permission devoid of absolute grant for the use, possession or occupation of his land by another even without establishing the terms and nature of the tribute, it is implied that customary tenancy is thereby created.⁵⁴⁸

Therefore, there are situations where payment of tributes was excluded from the terms of contract as the over-lords may prefer to grant the land free of such an encumbrance as an act of kindness. In some instances, the overlord may even demand that the tenant stops the payment of an earlier established payment of tributes due to long association or the good behaviour of the tenants. In these instances, only the continued occupation of the land by the tenant, together with an assurance and recognition of the overlord's interests in the land is required for the tenant to enjoy the land peacefully in perpetuity. Such act of goodwill can never be usurped or construed to mean abdication of interest. Thus, in the case of *Epelle v. Ojo*,⁵⁴⁹ a claim to the title by the plaintiff even through the acquiescence of the defendant failed because the former was a customary tenant. Even the legitimate claim of having invested and done many material and financial improvements on the land with the knowledge of the landowner cannot alter the position in such

⁵⁴⁴ Ibid. P. 244; see also *Chikere v. Okegbe* (2000) 12 NWLR (Pt. 681), *Sehindemi v. Governor of Lagos state* (2006) 10 NWLR (Pt. 987) 41, *Lewis v. Obawole* (2007) 11 NWLR (Pt. 1247) 572- 590

⁵⁴⁵ *Lasisi & Ors v. Tubi & Ors* (1974) LPELR- 1757 (SC)

⁵⁴⁶ *Ejeanalonye & Ors v. Ikpendu Omabuike & Ors* (1974) All NLR 269, see also *Nwosu v Uche* (2005) 17 NWLR (Pt. 995)

⁵⁴⁷ See *Abimbola v. Abatan* (2001) 9 NWLR (pt. 717) 66

⁵⁴⁸ *Makinde v. Akinwale* (2000) 2 NWLR (pt. 645) SC; *Ogundipe v. Adenuga* (2006) 3 FWLR (pt. 330) 5302

⁵⁴⁹ (1926) 1 NLR 96. See also *Chairman LEDB v Sunmonu & Ors* (1961) LLR 20; *Nezianya v. Okagbue* (1963) 1 All NLR 352.

circumstance because acquiesce will not bar a claim if it is established that plaintiff's inaction is born out of intimacy or family relationship which may explain why the plaintiff was either slow in taking actions or may have preferred taking alternative means of dispute resolution first because of the desire to respect and sustain mutual relationship before being compelled to approach the court.⁵⁵⁰

So, the tenant cannot by effluxion of time or by virtue of the amount of structural developments and investments in the land convert such to full ownership. Full ownership can only be established at the mercies of the overlord or by mutually entering into fresh contracts to that effect. Though the concept of adverse possession, as it applies in many states in Nigeria, provides for actions relating to the recovery of land or declaration of title to be statute barred after twenty years in cases relating to state authorities⁵⁵¹ and twelve years in actions involving private individuals due to uninterrupted adverse possession.⁵⁵² However, in customary law, an established owner of land does not necessarily lose his title to land to an adverse possessor for merely going out of possession for long period of time. Customary tenures are not affected by the principle of adverse possession as Limitation Statutes expressly exclude any matter regulated by customary law from the ambit of its application.⁵⁵³ This position is settled in many decided cases in Nigeria.⁵⁵⁴

Kola tenancy on the other hand is a form of tenure holding peculiar to the Igbo people of Eastern Nigeria in which landowners grant the unwanted, surplus or unused portions of their land to grantees for either a kola, other payments or in some circumstances without any considerations whatsoever.⁵⁵⁵ Payments in money or kind are particularly not allowed and the grantee is loosely referred to as a tenant.⁵⁵⁶ This form of tenure arrangement also exists in some parts of the South-Western Nigeria, particularly in Oyo state and is known as "Isakole tenancy".⁵⁵⁷ Kola tenancy contains all the elements of customary tenancy but without annual

⁵⁵⁰ Smith, I. O, *Practical Approach to Law of Real Property in Nigeria*. P. 92-99

⁵⁵¹ Though the period of limitation under the Limitation Law of Western Nigeria Cap. 64 is 30 years. See s. 6(1).

⁵⁵² See the Limitation Law Cap. L67, Laws of Lagos state of Nigeria, 2003; s 15(2)(a)

⁵⁵³ Ibid. s.67(1)

⁵⁵⁴ See *Mora v. Nwalusi* (1962) 1 All NLR 681; *Ololunku v. Teniola* (1991) 5 NWLR (pt. 192) 501 at 513;

⁵⁵⁵ *Mojekwu v. mojekwu* (1997) 7 NWLR (Pt. 512) 283 at 300

⁵⁵⁶ *Mojekwu v. Iwuchukwu* (2004) 11 NWLR pt. 883

⁵⁵⁷ Epiphany Azinge et al, *Restatement of Customary Law of Nigeria*. P. 248

tributes. Just like customary tenancies, kola tenancy accords possessory rights only to the tenants in perpetuity in line with the terms of agreement.

However, with the introduction of the Act in 1978, and its subsequent vesting of radical title to all Nigerian land in the Governor, questions arose as to the continued legality or otherwise of the relationships that exist between customary overlords and their customary tenants. Unfortunately, the Act did not put in place any mechanisms for the resolution of the challenges associated with the operations of these pre-existing customary tenure arrangements, and this has resulted in unimaginably high number of unending family and communal land disputes and litany of court cases,⁵⁵⁸ with some leading to loss of large amount of revenues, lives and properties particularly within the South-Eastern part of Nigeria where the practice was common.⁵⁵⁹

One would have expected the Act to specifically lay to rest matters associated with these customary tenure principles and interests by according them the status of registrable equitable interests at its inception as was the case with other subsidiary interests in lands situated within the urban areas. The Act expressly gave directives on how to deal with subsisting equitable interests valid in law at its commencement in respect of developed lands in urban areas within the sections of its “transitional and other related provisions”. It provides that where any developed land, prior to the introduction of the Act, was subject to any mortgage, legal or equitable interest or encumbrance valid in law, such land shall continue to be so subject, and any certificate of occupancy issued thereafter must reflect the interests and encumbrances, unless the continued operation of such interests and

⁵⁵⁸ See *Abioye v Yakubu* (1991) 5 NWLR (Pt. 190) 130; *Yesufu Kasali & Ors v. Alhaji Liadi Lawal* (1986) 3 NWLR Pt. 305; *Chief Davies Momodu Ilo & Ors v. Chief G.A. Davies & Ors* (1986) unreported case with suit no. CAIL142/84; *Peter Dzungwe v. Oram Gbishe & Anor.* (1985) 2 NWLR (Pt. 8) 528; *Akpasubi Omonfoman v. C.K. Okoeguale* (1986) 5 NWLR (Pt. 40) 179; *Asani Taiwo & Ors v. Adamo Akinwunmi & Ors* (1975) 1 ANLR (Pt. 1) 202; *Chief Maduku Waghoreghor & Ors v. Josiah Agheghen & Ors* (1974) 1 SC. 1 at 9 to mention but a few.

⁵⁵⁹ On the example of the crises generated by customary tenancy, see the case of Akpu and Ajalli people of Orumba South and Orumba North Local Government Areas of Anambra state respectively, as recorded in Nwaiwu, Chimaobi,, ‘2 Communities biker over exclusion from proposed LGA’, Vanguard News, May 6th, 2015. <<https://www.vanguardngr.com/2015/05/2-anambra-communities-bicker-over-exclusion-from-proposed-lga/>>. Accessed 04/12/17. There is also Aguleri and Umuleri land dispute /communal clashes all in Anambra state, and Eziam Nneato and Ozara land dispute /communal clash in Umunneoci LGA of Abia state to mention but a few.

encumbrances would in the opinion of the Governor be contrary to the provisions and general intensions of the Act.⁵⁶⁰ This qualifies equitable mortgage and its likes as registrable interests that must be respected and maintained even in any further transactions relating to the land. However, the Act failed to make similar prescription in matters relating to rural lands and secondary customary tenures. The inability of the Act to recognise the existence of these complex traditional customary tenure arrangements, and its failure to put in place processes for peaceful resolution of the challenges associated with these pre-existing customary contracts and claims remain one of its highest tragic flaws.

Another challenge worth mentioning is the refusal of the various chiefs and heads of communities to relinquish the management and control lands to the appropriate statutorily recognised bodies as provided by the Act. It should be recalled that the Act provided for the establishment of the Land Use Allocation Committees and the Land Allocation Advisory Committees at the states and local government areas respectively to take over the management and control of land matters from the pre-existing customary institutions. Till date, various chiefs and heads of communities still see themselves as the custodians of the peoples' land, and have effectively continued to manage, control, partition and allocate land in contravention of the provisions of the Act. In situations in which written documents are required for this purpose, such documents are often raised and back-dated to reflect any time before the introduction of the Act. By so doing, such documents effectively transfer land behind the Act. These surreptitious transactions encounter new challenges as transactions dating back to the era before the establishment of the Act are no longer registrable now. However, the back-dated documents remain valid documents that conveys at least equitable tenurial interests.⁵⁶¹

In the same vein, the composition of the Land Use Allocation Committees and the Land Allocation Advisory Committees, as stipulated by the Act, leave much to be desired as the Act failed to recognise and assign roles to both pre-existing traditional institutions and most importantly women who constitute large chunk of the rural land end users. In a patriarchal society like Nigeria where women are roundly subjugated and, in most cases, denied right of property inheritance and

⁵⁶⁰ Section 34(4) of the Land Use Act.

⁵⁶¹ Oshio, P. E, 'The Indigenous Land Tenure and Nationalization of Land in Nigeria'. P. 50- 51

participation at the decision-making levels, reserving a statutorily recognised position for women at such a decision-making table would have sent a strong signal, ensured equitable representation and strengthened women's hands at the negotiation tables thereby boosting their morals and the chances of being heard at the point of policy making on land matters. Above all, taking a clear stand against any customary practice that discriminate against women's right of property inheritance would have been the most appropriate antidote to the discriminatory tenure practices that disinherit women in Nigeria.

More so, the Igbos of Eastern Nigeria are often referred to as the most entrepreneurial ethnic group in Nigeria with the highest incidence of rural-urban migration.⁵⁶² Acute shortage of land in Igboland which dates to the pre-colonial era, along with population increase and the customary inheritance system that provides for the partitioning of lands among the customarily recognized surviving heirs (mostly male bloodlines only) to a deceased member of the family in Igboland has resulted in severe fragmentation of already scarce land in Eastern Nigeria; putting more pressure on already scarce commodity and rendering agricultural mechanization nearly impracticable. In some instances, the inheritable land passes unto the first son only. These factors, coupled with the devastating effects of the Nigerian/Biafran war fought between the Nigerian government and the separatist Igbo ethnic group between 1967-1970, fueled the high level of rural-urban migration experienced mostly among Igbo men,⁵⁶³ leaving behind mostly women and children to engage in subsistent agriculture. Thus, women constitute the large chunk of the rural subsistent agricultural population in this region. However, these women are denied right of property inheritance, and do not own the lands they cultivate.⁵⁶⁴ The Act made no attempt at correcting this abnormal peculiarity. Reserving a permanent position for women in the land management boards would have ensured that women's voice is heard and accounted for at the point of decision making, that their various interests in land is given due

⁵⁶² Barth Chukwuezi, 'Through thick and thin: Igbo rural-Urban Circularity, identity and Investment'. (2001) *Journal of contemporary African Studies*, Volume 19, Issue 1, 2001. P. 55

⁵⁶³ Meagher, Kate, 'Networking for Success: Informal Enterprises and Popular Associations in Nigeria, in Barbara Harris-White and Judith Heyer (ed), *The Comparative Political Economy of Development: Africa and South Asia*. Routledge studies in development economics. (Routledge, Oxford, 2010), p. 160

⁵⁶⁴ The issue of land inheritance in Igboland has been exhaustively analysed in earlier chapters.

considerations during land registrations, sales and reforms, as well as ensure equitable representation in land governance in Nigeria. If the emergence of women jurists in the Nigerian Supreme Court bench, and their increasing assumption of positions of authorities and responsibilities within the Nigerian judicial system could be attributed as one of the major catalysts that brought about the recent unprecedented gender neutral court declarations and proscription of various discriminatory customary tenurial practices against women in Nigeria, as described in chapter two of this paper, I see no reason why the mandatory inclusion of women into land administration roles wouldn't bring same positive change for women emancipation in Nigeria.

On the other hand, the established traditional institutions which stands as cost-effective alternative, and well-grounded in matters relating to customary tenurial rights and rural land administration were also completely divested of their agelong functionalities in land management and its administration and were relegated to the background by the Act.

6.4: THE PREVAILING NIGERIAN LAND REFORM PROGRAMMES; PROGRESS AND PROSPECTS

The inability of the Land Use Act through its nationalization and unification agenda to bring the much-needed clarity, ease of land acquisition and transactions, equity and prosperity to the Nigerian land users, mostly the local dwellers and particularly the vulnerable members of the society, has led to the renewed clamour for reforms. The preponderance of other inhibitory elements ranging from administrative bottlenecks, obscure and non-systematic governmental registration processes, including the unnecessary inconveniences, delays and high cost of securing statutory right of occupancy which has led to many land transactions to either be conducted outside the formal market frameworks or be falsely back-dated to reflect periods before the effective date of the Act. Also, lack of digitalised and computerised land registry, flagrant corruption on the side of public office holders and government functionaries along with their cronies, acute shortage of technical-know-how, manpower and modern technological equipment, unnecessary duplication of governmental agencies and duties; non-existence of national cadastral map, and of course, the continued existence of discriminatory tenurial

practices have all lent credence to the need for urgent reform of the Nigerian land sector.⁵⁶⁵

Consequently, two broad range of reforms were advocated and promoted by stakeholders. While some stakeholders advocate for the Land Use Act to be totally expunged from the nation's constitution thereby giving room for the establishment of new land tenure, others call for its amendment to eliminate its inhibitory elements and reflect the practical realities on ground.⁵⁶⁶ Whichever reform approach one may prefer, the central element in all the criticisms is that the Land Use Act is not people oriented,

Whereas the post-independence reform needs in Nigeria was driven by the need to harmonise the divergent and complex land administration systems that pre-date Nigerian independence era; to cut the astronomical increase in land speculations/disputes and land profiteering; to actualise the desire to make land available at affordable rates to all Nigerians irrespective of their background and social status, as well as make land available to the governments for developmental purposes, the prevailing perception on land reform in Nigeria today is grossly informed by the belief that land holds enormous potentials that are capable of transforming and improving the living standards of its holders when properly regulated and its title is secure. Thus, it is believed among some stakeholders that systematic titling and registration of all lands in Nigeria would bring about a thriving and robust land market economy which would form the catalyst for the massive empowerment of the owners of these lands, particularly the rural dwellers, whose land assets are believed to be tied up as "dead capitals" as a result of dearth of title rights; a claim deflated by its evidential burden as already established earlier in this chapter.

The obvious dysfunctional nature of the prevailing land management system in Nigeria as could be deduced from above analysis once again re-enforces the call for the adoption of better and workable strategies that would assist the rural dwellers in turning their assets (land) to capital by granting of titles to their land, as well as bring to all Nigerians the much-desired developmental benefits and

⁵⁶⁵ Benjamin. G. E, et al., 'Factors influencing land title registration practice in Osun State, Nigeria'. P. 241

⁵⁶⁶ Mabogunje, Akin L, 'Land Reform in Nigeria: Progress, Problems and Prospects'. (2007) P. 9- 10. <<http://siteresources.worldbank.org/EXTARD/Resources/336681-1236436879081/5893311-1271205116054/mabogunje.pdf>>. Accessed 12/12/17

prosperity inherent in land. While berating the land nationalisation ideology of the Land Use Act, Atitiola stressed that;

The philosophy of the Land Use Act that all land belongs to the state and should be held in trust by the governor for the people, and that undeveloped land has no value, constitute a great obstacle to the development of a dynamic market land economy and therefore needs a surgical review for the current initiatives of unlocking the commercial potentials of land in Nigeria to be realised.⁵⁶⁷

During the inauguration of Late President Musa Yar'adua's administration on the 29th of May 2007, the then newly elected president unveiled his "Seven Points Agenda" which would form the basis for his administration's sustainable developmental drives. Included in this list was "Land Tenure and Home Ownership: Review of the Land use laws to facilitate proper use of the Nation's land assets for socio-economic development; and citizens' access to mortgage facilities".⁵⁶⁸ In recognition of mounting criticisms and calls for tenure reform in Nigeria, president Musa Yar'adua on the 2nd of April 2009 set up the Presidential Technical Committee on Land reform (PTCLR). The PTCLR was charged with the responsibility of examining the problems associated with the current land tenure system in Nigeria with the intention of addressing the shortcomings thereof, resolving the current impasse and creating the much-needed land market economy. The government drew-up terms of reference for the land reform committee.⁵⁶⁹ It was believed that successful execution of these terms of reference would aid the development of new national land policy for Nigeria, as well as chart a new roadmap for improving existing institutional and legal frameworks of land tenure that would guarantee robust land market economy for the country.

⁵⁶⁷ Olusola Atitiola, 'Land Administration Reform in Nigeria: Issues and Prospects'. (2010) Invited paper, FIG Congress, Sydney, Australia, 11- 16 April 2010, P. 9- 10. <https://www.fig.net/resources/proceedings/fig_proceedings/fig2010/papers/inv04/inv04_atilola_4758.pdf>. Accessed 14/12/2017.

⁵⁶⁸ Robert Oghenedoro Dode, 'Yar'adua 7-Point Agenda, the Mdgs and Sustainable Development in Nigeria'. (2010) Global Journal of Human Social Science, Vol. 10 Issue 4, August 2010. P. 4. <https://globaljournals.org/GJHSS_Volume10/1-Yaradua-7-Point-Agenda-the-Mdgs-and-Sustainable-Development-in-Nigeria.pdf>. Accessed on 14/12/17

⁵⁶⁹ Mabogunje, Akin L, 'Land Reform in Nigeria: Progress, Problems and Prospects'. P. 11.

As deliberations commenced, it became clear to the committee that for a successful and sustainable tenure reform programme with firm legal foundation and guaranteed funding to be achieved in a country as large and complex as Nigeria, there would be need for the setting up of a statutorily recognised institution to guide and systematically coordinate the processes of the reform and monitor its progress across the length and breadth of the Nigerian landscape, as the reform assignment will obviously transcend the scope and lifespan of a committee. Thus, the committee requested for the setting up of “National Land Reform Commission”. To accomplish this goal, a bill for the establishment of the National Land Reform Commission was thereafter sent to the National Assembly for deliberation and ratification.⁵⁷⁰ The committee was still at the periphery of their assignment when the then president died in office.⁵⁷¹ The then vice president, Goodluck Jonathan, was sworn in to complete the remaining years of their mandate. He continued with the implementation of the 7-point agenda of his predecessor.⁵⁷² In 2011, President Goodluck was re-elected after the expiration of the Yaradua/Goodluck joint mandate. In line with the policy reversal attributes of all previous administrations in Nigeria, both military and civilian regimes,⁵⁷³ the newly elected president Goodluck Jonathan, at his inauguration, announced the new agenda for his administration tagged “transformation agenda”. As is the case with situations where reforms measures are based on the goodwill and mercies of individual personalities in positions of authorities instead of being institutionally driven, land reform was conspicuously missing from President Goodluck Jonathan’s “transformation agenda”, and that marked an end to the new land reform programme in Nigeria.

⁵⁷⁰ Muhammad Bashar, ‘Land Reform in Nigeria: The Nigerian Institution of Estate Surveyors and Valuers’ Perspective - Challenges and Prospects. FIG Working Week 2011; Bridging the Gap between Cultures, Marrakech, Morocco, 18-22 May 2011.

⁵⁷¹ President Umaru Musa Yar’adua, the 13th president of the Federal Republic of Nigeria was sworn into the office on the 29th of May 2007 and died on the 5th of May 2010.

⁵⁷² Nairaland, ‘7-points Agenda Alive- Jonathan- Politics- Nairaland’. (2010) <<http://www.nairaland.com/426397/seven-point-agenda-alive-jonathan>>. Accessed 13/12/17

⁵⁷³ Gyong, John Emmanuel, ‘A Social Analysis of the Transformation Agenda of President Goodluck Ebele Jonathan’. (nd) European Scientific Journal, July edition vol. 8, No.16. p. 96. <<http://eujournal.org/index.php/esj/article/viewFile/249/279>>. Accessed 12/12/17

Various innovative social frameworks, commendable developmental programmes and accomplishments of successive administrations in Nigeria always go to ruins at the exit of the founding actors and the political office holders with established interest in the developmental ideology. Policy reversal has constantly been antithetic to Nigerian sustainable developmental goals as successive administrations since independence engage in spiral policy somersaults.⁵⁷⁴ This also goes to justify the fears expressed in chapter four of this paper over the sustainability of the commendable accomplishments and breakthroughs of the “Activist justices” and Nigerian Courts against the obnoxious and discriminatory provisions of various customary practices that subjugate women on the ground of their gender in Nigeria. Goodluck Jonathan’s administration was voted out of office during the 2015 presidential election, paving way for the emergence of Rt. General Mohammadu Buhari as Nigerian president. Unfortunately, land reform could not make it into his 10-point agenda, and the endless waiting continues in anticipation that one day, another president with clear vision of the indispensability of land reform to the development, sustainability and emancipation of Nigerians would emerge.

6.5: Conclusion.

This chapter x-rayed the various colonial and post-colonial land administration and tenure reform programmes in Nigeria, and stressed that the inability of these reform programmes and the recent judicial interventions in land matters to guarantee access, equity, probity, justice and security of tenure for all Nigerians, particularly for women, the rural poor and other vulnerable members of the Nigerian society, led to the adoption of the Land Use Act of 1978, which currently serves as the legal guide for the administration of all land matters in Nigeria. Unfortunately, four decades after the promulgation and adoption of the Act, the actualisation of its set objectives seem a mirage. Instead of solving the problems and challenges it met on ground, the Act has exacerbated some of the problems and created new ones. The biggest part of the problems faced by the Act manifests in its inability to address and reconcile issues relating to customary tenurial arrangements and pre-existing traditional institutions that exists within some parts of the country thereby missing their potential contributions towards the

⁵⁷⁴ Ibid. p. 97- 98

improvement of the livelihood and tenure security of many women and other vulnerable groups that rely on their provisions for survival. Recent attempts at resolving the impasse has been unsuccessful as a result of change of governments, policy summersaults and lack of political will from various stakeholders. These unfortunate developments have intensified the call for urgent reform of the Nigerian land sector.

CHAPTER 7: LAND REFORM IN GHANA

7.1: INTRODUCTION.

Attempts are made hereafter to trace the framework of Ghanaian land governance through its historical synopsis and evolving epochs, ranging from the pre-colonial era, through the colonial experimentations which was characterised by a shift from the earlier policies of *laissez faire* and indirect rule, to the period of state-led development drives along with its implications on land tenure and state involvement in land administration. To the post-colonial period of divergent policy experimentations, paying attention to the recent land administration reform initiatives of the government and their implications on customary institutions, tenure security for women and other vulnerable groups, as well as its ability to create a viable and sustainable land market economy. This will help us understand and contextualise the changing dynamics that account for the contemporary Ghanaian land management preferences, particularly the Land Administration Project (LAP) and its successes, the drivers of the paradigm shift and its implications on the socio-cultural and economic development and sustainability of the Ghanaian state.

7.2: GHANAIAN STATE AND THE TENURE SYSTEM

Just like many other African countries, Ghana⁵⁷⁵ is a heterogenous state with multi religious, ethnic, linguistic and cultural divides. A complex mix of constitutional, legislative and customary sources remains the basis for land governance in Ghana, as the overall legal regime regulating land management in Ghana is made up of the constitution of the state of Ghana, policy instruments, statutory enactments, judicial pronouncements, common law principles and customary law provisions and practices which have been enacted and developed or observed over the years for the regulation of land matters.⁵⁷⁶ With the estimated population of about 27,499,924 people and total land area of 238,533 sq. km.⁵⁷⁷ It is believed that there are over 90 ethnic groups with

⁵⁷⁵ Ghana is one of the countries in West Africa. Formerly known as Gold Coast, the name was changed to Ghana at her independence on the 4th of March 1957. Thus, Ghana and Gold Coast are used interchangeable at different stages in this paper.

⁵⁷⁶ Amewu, p. J. 'Land Bill 2017. Ministry of Land and Natural Resources'. (2017), P. 2. <<http://www.ghanalap.gov.gh/files/CABINET-APPROVED-LAND-BILL.pdf>>.

Accessed 01/01/2018

⁵⁷⁷ The CIA World Factbook, July 2017. <<https://www.cia.gov/library/publications/the-world-factbook/geos/gh.html>>. Accessed 02/01/2018

varying sizes in Ghana.⁵⁷⁸ However, 8 hegemonic ethnic groups dominate all activities within the state as other smaller ethnic groups are often subsumed within the larger ethnic divides for economic and political expediency.⁵⁷⁹

The heterogenous nature of Ghanaian society made it ideal for the existence of pluralistic legal and land tenure systems. These prevailing tenure systems are mostly categorised into public or state land, vested land, stool land, family and private lands. Public or State land is made up of lands compulsorily acquired by the Government for its use for the benefit of the public. Vested land is stool lands that are vested in the government, in which government controls and administers as trustee on behalf of the people. Stool land on the other hand, are lands owned and managed by a stool for the benefit of all members of the community. Family land comprise those lands vested in a family and preserved for the use by the members of the family or clan, often administered by the family heads or Tendana (first settlers). Thus, the allodial or paramount interests of customary lands are traceable to Skins, Stools, family and clan. Private land are lands acquired outright by an individual or a group of persons particularly through purchase for their private use in accordance to an agreed terms and conditions.⁵⁸⁰ Customary law principles are operational only in some areas occupied by some specific ethnic groups within the state,⁵⁸¹ and these principles are generally unwritten.⁵⁸² Whereas the ownership and control of customary land is vested on the appropriate traditional institutions (i.e. Stools, Skins, clan and the land-owning families), ownership of public or state land rests with the President while the power to

⁵⁷⁸ Richard Asante and E. Gyimah-Boadi, 'Ethnic Structure, Inequality and Governance of Public Sector in Ghana'. (2004) United Nations Research Institute for Social Development (UNRISD). P. 8- 9.

<<http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan040107.pdf>>. Accessed 02/01/2018

⁵⁷⁹ The percentage of the dominant ethnic groups in Ghana are as follows; the Akans (47.5%), Mole-Dagbon (16.1%), Ewe (13.9%), Ga-Dangme (7.4%), Gurma (5.7%), Guan (3.7%), Grusi (2.5%), Mande (1.1%) and others 1.4%.⁵⁷⁹

⁵⁸⁰ Darkwah Samuel Antwi et al. 'Analysis of Land Tenure Systems and its Relationship with Productivity in the Agricultural Sector in Ghana'. (2015) *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis*, 63(3): 893–901. At 894.

<file:///C:/Users/USER/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/actaun_2015063030893.pdf>. Accessed 03/01/2018.

⁵⁸¹ Nyarko Michael, 'The Right to Property and Compulsory Land Acquisition in Ghana: An Analysis of the Laws and Policies Towards Greater Protection'. (2014) p. 34- 35.

<file:///C:/Users/USER/Downloads/THE_RIGHT_TO_PROPERTY_AND_COMPULSORY_LAN.pdf>. Accessed 04/01/2018.

⁵⁸² See chapter 3 of this paper for a broad analysis of the African customary law principles.

manage and administer public land is vested in the Land Commissions. These institutions perform fiduciary functions as the lands are only held in trust for the benefit of the people.⁵⁸³ This is in line with the provisions of the constitution of the land.

Article 36(8) of the 1992 Constitution of Ghana mandates the state to recognise that:

...ownership and possession of land carry a social obligation to serve the larger community and, in particular, the state shall recognise that the managers of public, stool, skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana of the stool, skin or family concerned, and are accountable as fiduciaries in this regard.

Land in Ghana is not nationalised even though the prevailing notion of customary authorities in land administration in Ghana has so much been redefined and transformed at various instances by the state since the colonial era. The prevailing customary institutions existing in Ghana today are hybrid of modernised arrangements arising from alliance between the state and traditional authorities.⁵⁸⁴

Public or State land in Ghana is comprised of two categories; land acquired out of compulsion for public use or interest in line with the State Lands Act of 1962 (Act. 125) or other relevant legal provisions, and land that is vested in the President to hold in trust for the landholding community in line with the provisions of Art. 123, Lands Act of 1962.⁵⁸⁵ For land acquired compulsorily by the government, all previous and subsisting interests in such land are extinguished as the government takes over the ownership and control of the land. However, such expropriations attract the payment of compensation in accordance with the established statutory provisions. In the case of “vested land”, there exist dual ownership systems; whereas the legal title resides with the state, beneficiary interests rest with the communities. Incomes accruing from vested land were paid into the account of the landholding traditional stool in accordance to the statutorily established revenue sharing formula.⁵⁸⁶

⁵⁸³ Ubink, J. M and Quan, J. F, ‘How to combine tradition and modernity?’. P. 42

⁵⁸⁴ Rebecca Sittie, ‘Land Title Registration –The Ghanaian Experience. Shaping the Change’. (2006) XXIII FIG Congress Munich, Germany.

<https://www.fig.net/resources/proceedings/fig_proceedings/fig2006/papers/ps07/ps07_15_sittie_0848.pdf>. Accessed 25/01/2018.

⁵⁸⁵ Kasanga, K. and Kotey, N. A., ‘Land Management in Ghana: Building on Tradition and Modernity’. (2001) International Institute for Environment and Development, London. P. 1. <<http://pubs.iied.org/pdfs/9002IIED.pdf>>. Accessed 01/01/2018

⁵⁸⁶ Ibid.

Fig. iii. Map of Ghana showing the Regions.



Source: (Ghanaweb, 2012).

Customary land tenure accounts for about 80% of the total land tenure system in Ghana.⁵⁸⁷ The provisions and operational methods of aspects of some of these customary land tenure systems have been criticised for discriminating against women and other vulnerable members of the society just as is the case in Nigeria. Thus, various customary tenure provisions have been clamped down by the courts in Ghana for harbouring various forms of discriminatory elements and practices that deny women's land rights and tenure security on the ground of their gender.⁵⁸⁸ Customary lands are referred to as "Stool land" within the southern part of Ghana; the eponym is derived from the traditional chieftaincy symbol of the carved wooden stool which is their symbol of authority and is believed to embody the souls of the ancestors. In the northern part of Ghana, customary land is known as "skin land", in respect of the fact that their chiefs sit on hides or skins of tigers, lions or elephants as custom demands. Land within some acephalous communities in the northern Ghana are administered by their traditional heads known as Tendanas, while lands within the Volta Region and Greater

⁵⁸⁷ Ubink, J. M and Quan, J. F, 'How to combine tradition and modernity?'. P. 42

⁵⁸⁸ See *Boafo v Boafo* [2005-2006] SCGLR 705, *Quartson v Quartson* [2012] SCGLR 1077; *Fynn v Fynn & Anor* [2013- 2014] 1 SCGLR 727

Accra are referred as family lands as the power to administer land in these areas are vested in the family heads.⁵⁸⁹

Though there exist various forms of customary land tenure system as described above, family tenure system remains the most dominant of all the customary tenure systems. According to the ISSER land policy survey, family land tenure accounts for 70% of the total customary land tenure system in Ghana (43.4% under patrilineal tenure system, and 24.6% under matrilineal tenure system).⁵⁹⁰ Inheritance remains the major means of acquiring tenurial rights under the family ownership system, and these inheritance patterns can either be patrilineal or matrilineal.⁵⁹¹

7.3: THE PRE-COLONIAL, COLONIAL AND POST-INDEPENDENCE TENURE SYSTEMS AND REFORMS IN GHANA

i. PRE-COLONIAL TENURE ARRANGEMENTS IN GHANA

Management, control and ownership of land and other natural resources within the pre-colonial Gold Coast society (currently known as Ghana) were held and administered communally in line with the people's customary traditions and norms. There were as many customary rules of engagement as there were ethnic communities, and each set of rules reflect the definitive peculiarities, norms and idiosyncrasies that shape that given ethnic community.⁵⁹² However, three major kinds of customary tenurial holdings were easily discernible; the allodial title which accords ownership rights on the customary law communities or institutions; secondary tenurial right that accords members of the landholding institutions or groups usufructuary right or customary law freehold which can be held by either an individual, family or group of people belonging to the allodial community; and finally, different forms of customary tenancies. It should be noted that all allodial title holders in Ghana are titular owners as their positions are akin to that of a trustee.⁵⁹³

⁵⁸⁹ Ubink, J. M and Quan, J. F, 'How to combine tradition and modernity?'. P. 42- 44

⁵⁹⁰ Darkwah Samuel Antwi et al. 'Analysis of Land Tenure Systems and its Relationship with Productivity in the Agricultural Sector in Ghana'. P.896

⁵⁹¹ See chapter 4 of this paper for broad analysis of patrilineal and matrilineal system of property inheritance.

⁵⁹² Djokoto, G and Opoku, K. 'Land Tenure in Ghana: Making a Case for Incorporation of Customary Law in Land Administration and Areas of Intervention by the Growing Forest Partnership. (2010) International Union for the Conservation of Nature and Growing Forest. P. 5.

<https://www.growingforestpartnerships.org/sites/gfp.iiedlist.org/files/docs/ghana/ghana_land_tenure-gfp_project.pdf>. Accessed 03/01/2018

⁵⁹³ Ibid.

Generally, pre-colonial West African customary legal provisions vest absolute tenurial rights on traditional institutions and never on individual members of the society. This was a customary legal position that was well established and equally acknowledged by the colonial authorities during the colonial era.⁵⁹⁴ In Ghana, these customary authorities or institutions symbolise the family, earth priests, traditional stools and skins. While individuals or subjects/members of these customary institutions enjoy beneficial interests or usufructuary right to land.⁵⁹⁵

ii. COLONIAL TENURE ARRANGEMENTS AND REFORMS IN GHANA

The advent of colonialism brought about a remarkable change on the nature and forms of the indigenous land tenure system of the native Gold Coast. At the inception of colonialism in Gold Coast during the 20th century, the established customary tenurial arrangements in operation were contrary to the tenure arrangements that the Europeans were used to. Fearing that the customary tenurial rights of the native Gold Coast which abhors individual ownership were not only insecure, but also incapable of accommodating and supporting the kind of economic developments and the migrations occasioned by the colonialism. More so, collective land ownership was perceived as a threat to the colonial masters' policy of expropriation, expansion and exploitation of the natural resources thereof. Because of the above, the colonial administration sought to introduce state control and management of land and natural resources. Laws that would accord sweeping control and managerial powers over land and natural resources were unilaterally introduced by the colonial administration without consulting the native Gold Coast populace.⁵⁹⁶

The colonial administration established two separate land policy regimes for the southern and northern parts of the country. They adopted the policy of land nationalization for the northern part of Ghana thereby vesting the ownership and control of all land in the northern Ghana in the Crown. However, the policy of *laissez faire* was maintained for the southern part of the country, in contrast to the policy of dirigisme found in the north, as customary tenure policies continued unabated. All attempts aimed at extending the land tenure policy existing in the north to the southern part of Ghana was vehemently resisted by the traditional authorities and the native middle class

⁵⁹⁴ This customary attribute was given legal backing in *Amodu Tijani v. Secretary of Southern Nigeria* (1921) AC 399, 404,

⁵⁹⁵ Djokoto, G and Opoku, K. 'Land Tenure in Ghana: Making a Case for Incorporation of Customary Law in Land Administration. P. 6

⁵⁹⁶ Ibid.

leading to the eventual withdrawal of the “Public Land Bill” that was initiated by the colonial administration to achieve the goal.⁵⁹⁷

To formalise and consolidate the expropriation policy, four major legal frameworks were introduced. These were the Administration (Northern Territories) Ordinance (Cap III), 1902; The Land and Native Rights Ordinance No. 1, of 1927, the Land and Native Rights Ordinance, 21 November 1931(Cap 147), 1951; and the Minerals Ordinance 1936(Cap 155) revised in 1951.⁵⁹⁸ The practical applicability of these laws were limited. This was because, there were limited number of land acquisitions by the government for public use, and no local community was displaced.⁵⁹⁹ In addition, high level of illiteracy in the northern part of Ghana means that members of the local communities went along with their customary land holding arrangements, oblivious of the changes in the tenorial legal provisions and operational guidelines.⁶⁰⁰ That notwithstanding, the existence of these ordinances provided the colonial administration with the opportunity to easily access and exploit land and other natural resources at relatively cheap prices, thereby short-changing women, the rural poor and other vulnerable groups that constitute bulk of the people that mostly depend on these lands for their livelihood..

Keeping with the post-war institutional and legislative reform approaches of the colonial administration in Ghana, the State Councils Ordinance of 1952 was equally enacted to regulate the sale of lands by the traditional chiefs. The Act provided that all land transactions by chiefs must receive the consent of the State Councils for it to be valid, while the State Councils headed by the paramount Chief/Head Chief were made up of the representatives of chiefs within a given district. These acts of expropriations by the government of the day and attempts at reforming the native authority systems for effective and accountable land management transcended the colonial era as will be seen from the analysis of the post-independence tenure system in Ghana.

iii. POST-INDEPENDENCE TENURE SYSTEMS AND REFORMS IN GHANA.

The post-independent Ghanaian State maintained the land policy frameworks of their colonial predecessor. Following the Ghanaian independence in 1957, all state functions

⁵⁹⁷ Ibid. p. 7

⁵⁹⁸ Ibid. p. 6

⁵⁹⁹ Ibid. p. 7

⁶⁰⁰ Ibid.

and properties formerly vested in the Governor General was transferred to the President.⁶⁰¹ The government further enacted new laws through which the doctrine of “eminent domain” was introduced. These laws aided the expropriation of large parcels of land under customary tenure control and vested same in the state.⁶⁰² The government expropriated large tracts of lands for the establishment of state farms and other public uses without the payment of compensations to the dispossessed farmers. Protests against the state expropriation exercise were subdued by exertion of political pressure while some farmers were eventually employed to work in the government farms.⁶⁰³

The new post independent administration in 1962 particularly re-nationalised all land in the Northern Ghana via the Lands Act, 1962 (Act 123) while the Consequential Executive Instruments 87 and 109 of 11 July 1963 vested same in the president.⁶⁰⁴

Within the Southern region of Ghana, the report from two Commissions of enquiry revealed that revenues accruing from land were being used by two stools (Ashanti and Akim Abuakwa Stools) to support the activities of the opposition parties.⁶⁰⁵

Consequently, the then government took over the management of the lands under the control of the two Stools through the Ashanti Stool Lands Act, and the Akim Abuakwa (Stool Revenue) Act of 1958, and vests same in the president to manage on behalf of the communities. Thus, the state assumed the position of a trustee to the affected lands as the central government took over the administration of all revenues accruing from these stool lands. It equally put in place arrangements for sharing the revenues from the land between the Central Government, Local District Authorities concerned and the Stools whose lands were taken over.⁶⁰⁶ The land nationalisation and expropriation exercise was

⁶⁰¹ Sections 1 and 2 of the State Property and Contracts Act, 1960, (CA6)

⁶⁰² Some of the laws that aided the government’s expropriation policy were (i) The State Lands Act, 1962(Act 125); this established the State’s “eminent domain” which empowered the government to compulsorily acquire land for public use; (ii) The Administration of Lands Act of 1962(Act 123) which gave the State the power to take over the management and control of any family, or stool land; (iii) The Concessions Act, 1962(Act 124) (now repealed) which vested all timber trees in the State government in trust for the stool on whose land they stand.

⁶⁰³ Kasanga, K. and Kotey, N. A., ‘Land Management in Ghana: Building on Tradition and Modernity’. P. 2

⁶⁰⁴ Ibid.

⁶⁰⁵ Several prominent paramount chiefs supported the opposition parties. This included the Asantehene, Prempeh II, and the Okyenhene of Akim Abuakwa, Ofori Atta II. The government accused these chiefs of misappropriating stool revenues and using them to fund opposition movements, rather than using them for the benefit of the communities in which their stool lands were vested.

⁶⁰⁶ Kasanga, K. and Kotey, N. A., ‘Land Management in Ghana: Building on Tradition and Modernity’. P. 2. See also Kojo Sebastian Amanor; Securing Land Rights in Ghana.

later fully extended to the rest of the country.⁶⁰⁷ Thus, the government established its authority and control over all land in the country, including the collection and distribution of revenues to the exclusion of the subsidiary authorities and customary institutions.

The first post-independence national government in Ghana was overthrown through military coup on the 24th of February 1966 because of their gross abuse of governmental powers, particularly, with regards to their land policies and administration in the country. The military government, in response to the perceived highhandedness of the president and shenanigans of the deposed democratically elected government,⁶⁰⁸ launched series of land reform measures. The “Lands Commission” however came into effect via the Land Commission Act 1971 (Act 362) in response to the provisions of the Article 163(5) of the 1969 constitution of Ghana which provided that:

The Lands Commission shall hold and manage to the exclusion of any other person or authority any land or minerals vested in the president by this constitution or any other law or vested in the Commission by any law or acquired by the Government, and shall have such other functions in relation thereto, as may be prescribed by or under an Act of parliament.⁶⁰⁹

The then military administration placed the Lands Commission under the Ministry of Lands and Natural Resources, the former Lands Department became the new secretariat of the Lands Commission, while the power to administer all land formerly vested in the president was transferred to the commission to exercise on behalf of the military government.⁶¹⁰

In J.M. Ubink, A.J. Hoekema, W.J. Assies (ed) *Legalising Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America*. (Leiden University Press, 2009) p. 107

⁶⁰⁷ The nationalisation exercise was extended to the rest of the country through the Stool Lands (Validation of Legislation) Act No.30 of 1959, Stool Lands Act, 1960 (Act 27) and the Administration of Lands Act 1962, (Act 123).

⁶⁰⁸ Kasanga, K. and Kotey, N. A., ‘Land Management in Ghana: Building on Tradition and Modernity’. P. 2.

⁶⁰⁹ See Article 163(5) of the 1969 Constitution of the Republic of Ghana

⁶¹⁰ The Lands Commission first came into existence following the 1969 Constitution, under the Lands Commission Act 1971 (Act 362). Article 163 (5) of the 1969 Constitution. Section 36 of the Provisional National Defence Council (Establishment and Consequential Matters Amendment) Law, 1982 (PNDCL 42) equally made provision for the establishment of the Lands Commission, while the membership was to be appointed by the Council. Offices of the former Lands department was offered to the

Following the 1979 election, the Land Commission was eventually placed under the President. However, the 1979 constitution retained the functions of the commission but sought to grant it more autonomy by insulating the commission from undue political meddling.⁶¹¹ It re-vested most of the earlier expropriated land back to the customary land holding institutions. The expropriated northern Ghanaian lands, particularly, were returned to their customary custodians.⁶¹² This was precipitated by the sustained campaign and pressure from the northern elites and chiefs, resulting to the establishment of unified land administration system for the entire Ghanaian state.⁶¹³ The implementation of this land restitution policy was fraught with challenges and contestations in the north. These constraints and disputes arose because, in many parts of the northern Ghana, the colonial administration created and invented chiefs with administrative boundaries, particularly, within those communities without unitary paramount chiefs.⁶¹⁴ In these areas, land was traditionally under the control and administration of earth priests before the colonial creations. With the recognition of traditional land ownership in 1979 and return of land to chiefs, lands within these areas were returned to the invented chiefs that never controlled lands before instead of the earth priests. This precipitated series of contestations and land disputes between the invented chieftaincy institutions and the earth priest who feel cheated out of their birth rights.⁶¹⁵ As the popular African adage goes, “when two elephants fight, it is the grass that suffers”. While this contestation ravaged, it was women, the rural poor and other

newly created Lands Commission, and was in mid 80s fully turned into the secretariat of the Lands Commission

⁶¹¹ Article 189 (7) of the 1979 Ghanaian Constitution provides that “In the performance of any of its functions under this Constitution or any other law, the Lands Commission shall be subject only to this Constitution and shall not be subject to the direction or control of any other person or authority”.

⁶¹² These lands were earlier expropriated immediately after Ghanaian independence via the Administration of Lands Act, 1962 (Act 123) with Consequential Executive Instruments 87 and 109 of 11 July 1963

⁶¹³ Kojo Sebastian Amanor; *Securing Land Rights in Ghana*. P. 100.

⁶¹⁴ Chieftaincy institutional system was introduced into some northern sub-divides like Tallensi, Frafra, Nabdam, Kusasi, Builsa, Bimoba and parts of Konkomba by the colonial administration to facilitate their indirect rule policy. The colonial authority appointed chiefs for these associates and attempted to create larger socio-political units. However, their creation did not obliterate the existence of the “Tendambas” who maintained their traditional rights over lands despite the increasing popularity and powers of the invented chiefs as the government’s recognised mouthpiece between the people and the government.

⁶¹⁵ Kojo Sebastian Amanor, *‘Securing Land Rights in Ghana’*. P. 100

vulnerable members of the communities that suffer the effects, as meaningful developments can never be achieved in a state of strife, rancour and chaos.

In 1980, the new civilian administration enacted a new law that re-invented all the controls and powers formerly introduced by the Administration of Land Act of 1962 which mandates for state's consent in any alienation of stool land in the country,⁶¹⁶ The new Act also established the office of the Administrator of Stool lands within the Land Commission with the mandate to open land accounts for each of the stools, collect revenues and disburse same to the beneficial interest holders in accordance to the law. This development re-introduced the uneven and unjust land management system.⁶¹⁷

Another military coup in 1981 marked an end to the existence of the 1979 constitution and its land reform policies. The new military administration changed the functions of the Land Commission and provided for its members to be appointed directly by the military junta.⁶¹⁸ The Land Commission was saddled with the responsibility of granting public lands, excluding those lands where stools have powers to administer or lands where exploitation of natural resources was being undertaken by the state. The Commission was also vested with the task of formulating recommendations for new National Policy on Land Use, as well as the maintenance of accurate land records. Regional subcommittees were also established to handle land matters within the various regions.⁶¹⁹

The office of the Administrator of Stool Lands was also established within the secretariats of the Land Commission to among other things establish accounts for each stool into which revenues will be paid, collect all payments on behalf of the stools, account for the monies and disburse same in accordance to the dictates of the Secretary

⁶¹⁶ Section 3(1) of the Lands Commission Act, 1980 (Act 401) provides that "An assurance of stool land to any person shall not operate to pass any interest in, or right over any stool land unless the same shall have been executed with the consent and concurrence of the Commission".

⁶¹⁷ It should be noted that customary land ownerships in Ghana comprises of Stool, Skin, Clan and family land holdings. However, clan and family lands were not included in the revenue collection and disbursements based on the revenue sharing formula as enshrined in the Article 267(6) of the 1979 Ghanaian constitution.

⁶¹⁸ See section 36 of the Provisional National Defence Council (Establishment and Consequential Matters Amendment) Law, 1982 (PNDCL 42)

⁶¹⁹ Kasanga, K. and Kotey, N. A., 'Land Management in Ghana: Building on Tradition and Modernity'. P. 2

for Lands and Natural Resources, with approval from the Government.⁶²⁰ Distribution of revenues from stool lands was based on 10% share to the allodial stools on behalf of their subjects, 20% of the revenue goes to the traditional council comprising council of paramount chiefs of the traditional area and the divisional chiefs. 60% of the revenue goes to Local Government Councils within whose area of jurisdiction the stool land is situated. The remaining 10% is reserved by the Commission for administrative costs. It can be inferred from the above sharing formula that the land holding stools and their fiducial subjects receive only 10% of the proceeds from their land while the traditional councils, together with the government and its agencies take 90% of the revenues. The Administrator of Stool Lands also has the right to hold back the payment of any stool's share of the revenues where misappropriation of the fund is perceived or where there is dispute as to the right owner of the land or occupancy of the stool.⁶²¹

It must be recalled that customary land ownership in Ghana comprises of stool, skin, clan and family lands. Allodial titles to majority of the lands within the Upper East, Upper West, Volta and parts of Eastern, Greater Accra and Central Regions are under the control and management of clans and families. Unfortunately, the functions of the Administrator of Stool Lands are however constitutionally restricted to stool and skin lands only. This means that clan and family lands were still not included in the revenue contribution and disbursement arrangements based on the above described lopsided revenue sharing formula and contributes nothing to the District Assembly for the development of their regions. This situation elicited invidious reactions from the stool and skin allodial communities that feel short-changed.⁶²² Thus, in some places like Greater Accra, stool and skin lands are being converted into family lands in attempts to circumvent the inequitable restrictions and revenue sharing formula imposed by the constitution.⁶²³

The Land Valuation Board was also created through Section 43 of the Provisional National Defence Council Law (PNDCL) 42 1986. Some aspects of the functions of the Land Commission were divested to the newly created Land Valuation Board whose

⁶²⁰ Article 267 (2) of the constitution provides for the creation of the Office of the Administrator of Stool Lands with the power to collect all stool land revenues and disburse the revenues in accordance with the formula provided in Article 267 (6).

⁶²¹ Kasanga, K. and Kotey, N. A., 'Land Management in Ghana: Building on Tradition and Modernity'. P. 2

⁶²² Amewu, p. J. 'Land Bill 2017. Ministry of Land and Natural Resources'. P. 3- 4

⁶²³ Ibid. p. 4-5

executive secretary was to be appointed by the Council.⁶²⁴ The functions of the board, among other things, include the determination of compensations for expropriated lands, preparation of lists of valuations for property ratings, determination of the values of government rented places, valuation of interests in land for the administration of death duties, and rendering of advisory roles to the Land Commission and the Forestry Commission on payment of royalties on forestry holdings and products.⁶²⁵ Operations of this board was however marred by different challenges from the outset, this unfortunate situation has persisted unabated.⁶²⁶ The Land valuation Board does not have any enabling Act till date.⁶²⁷

Meanwhile, long before the need for formalisation of land titles in Ghana became evident, oral land grants were completely seen and regarded as valid transactions particularly when the grantees show sign of appreciation by offering some items like kola nuts and alcoholic drinks.⁶²⁸ Despite the acceptability of this process as a valid process of land transfer, the process was prone to crisis and challenges due to lack of provable evidence as fading memories, death of witnesses and loss of items of evidence often gave rise to conflicts, crises between clans and endless court litigations.⁶²⁹ The inability of customary land management system to provide clear, lasting and reliable evidence of land transactions necessitated the need for the adoption of land formalisation process to ensure certainty and security of tenure.⁶³⁰ In respect of the above, concerted efforts were made through legislations, adoption of land registration policies and establishment of land institutions in attempts to introduce evidence based, simple and safe land dealings. The first known land ordinance in Ghana which

⁶²⁴ Section 43 of PNDCL 42 of 1986 provided for the establishment of the Land Valuation Board.

⁶²⁵ Kasanga, K. and Kotey, N. A., 'Land Management in Ghana: Building on Tradition and Modernity'. P. 5

⁶²⁶ The challenges militating against the progress and smooth running of the Land Valuation Board include severe shortage of qualified staff, poor logistic support and remuneration, delays in government's payment of compensations, outmoded legal provisions, free service delivery to the District and metropolitan Assemblies which impact negatively on its revenue generation and its dependence of the Land Commission and site Advisory Committees for the discharge of its duties.

⁶²⁷ Kasim Kasanga, 'Land administration Reforms and Social Differentiation: A Case of Ghana's Land Commission'. IDS Bulletin Vol. 32 No. 1 2001. P. 57

⁶²⁸ Richmond J. Ehwi and Lewis A. Asante, 'Ex-Post Analysis of Land Title Registration in Ghana Since 2008 Merger: Accra Lands Commission in Perspective. Sage Open publication. P. 1- 2.

<<http://journals.sagepub.com/doi/pdf/10.1177/2158244016643351>>. Accessed 20/02/18

⁶²⁹ Ibid

⁶³⁰ Ibid.

incidentally provided for land registration could be traced back to 1883 and 1893 when the colonial powers demarcated and recorded some zones within the then Gold Coast for easy access and subsequently administrative conveniences.⁶³¹ This process continued into the colonial period, as centralised system of deeds registration remained operational in Ghana.⁶³² Right after independence, the Land Registry Act 1962, (Act 122) was introduced to regulate deeds registration in the state. This Act merely replicated the system of deeds registration that was in existence in Ghana before the independence; a system that was constrained by many challenges as registration of deeds was found to be useful only as a proof of evidence and does not confer title on the person whose name is on the registered deed or guarantee tenure security. Chief among the problems identified against the deed registration system was that the absence of documentary evidence that the occupier of a land has certain rights or interests to the land. This has led to plethora of long and treacherous litigations. Others include the absence of scientific and accurate maps and plans for clear identification and delineation of boundaries, as well as lack of prescribed format for dealings in land and land interests.⁶³³ Deed registration also excludes the traditional concept of oral land transaction and other customary titles common under customary law.

The persistence of problems of tenure insecurity and uncertainty in land transactions compelled the Ghanaian government to embark on new land registration scheme through the enactment of the Land Title Registration Law of 1986 (PNDCL 152), with the aim of registering not only deeds, but other forms of interests on land.⁶³⁴ This law provided for the registration of both the customary law and common law tenure systems (both deeds and titles became registrable). The identified registrable interests in land include allodial title, usufruct or customary law freehold, freehold, leasehold, customary

⁶³¹ Kombat, C and Lambini, S. 'Land management in Ghana, challenges for climatic change'. P. 7.

file:///C:/Users/USER/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8b/bwe/TempState/Downloads/Land_management_in_Ghana_challenges_for.pdf.

Accessed 20/02/18

⁶³² Registration of deeds was introduced in Ghana through the Land Registration Ordinance of 1883. This remained a voluntary exercise and was eventually repealed by the Land Registry Ordinance of 1895. This ordinance governed deeds registration until the enactment of the Land Registry Act 1962, (Act 122) after the Ghana independence.

⁶³³ Rebecca Sittie, 'Land Title Registration –The Ghanaian Experience'. P. 4.

<https://www.fig.net/resources/proceedings/fig_proceedings/fig2006/papers/ps07/ps07_15_sittie_0848.pdf>. Accessed 25/01/2018.

⁶³⁴ Kasanga, K. and Kotey, N. A., 'Land Management in Ghana: Building on Tradition and Modernity'. P. 5

tenancies and mineral licences.⁶³⁵ Land titles held by stools, skins, clans and families were to be registered in the corporate name of the group. However, the exercise was restricted to the urban areas of Accra, Tema and Parts of Kumasi that was selected as part of the pilot scheme. Law 152 made provisions for development of accurate cadastral maps to guard against frauds and multiple registration to reduce disputes and litigations. Land Title Adjudication Committee was also established as an alternative land dispute resolution mechanism to help in the fast resolution of controversies arising from the registration exercise. Anyone that is not satisfied with the decisions of the committee is free to appeal to the courts. To achieve a systematic and orderly registration exercise, at least, 70% of lands in each of the selected testing grounds for the registration project must have been registered before moving into new Districts.⁶³⁶

The registration exercise was introduced to tackle the challenges of tenure insecurity, uncertainty, disputes and litigations arising from poor land management thereby making land transactions easier, safer and cheaper. Decades after the introduction of the exercise, its impacts are grossly negligible as the progress of the exercise was hampered by series of design and implementation defects.⁶³⁷

On the design defects, the registration exercise only sought to consolidate on existing landholdings and land relations and did not attempt to reform the inherent substantive anomalies. Thus, problems associated with equitable land access, customary law tenancies and pledges, defective land valuation and the problems of rent or purchase prices of land were not distinctively resolved. Also, problems associated with allodial titles which are held by landholding institutions on behalf of the people were not dealt with properly. Though the law provided for the registration of stool, skin, clan/quarter and family lands in the name of the landholding group, it did not provide for the inclusion of the composition and membership of the allodial titles management committee or family committee members whose endorsements validate any land transaction embarked upon by the chiefs or family heads. Inability of the register to reflect the identities and membership of these important customary land administrative groups increase the chances of fraud, insecurity and uncertainty, as well as make it difficult for the determination of the level of representation for women and other vulnerable groups in the composition of the family and allodial land management

⁶³⁵ Rebecca Sittie, 'Land Title Registration –The Ghanaian Experience'. P. 5

⁶³⁶ Ibid.

⁶³⁷ Kasanga, K. and Kotey, N. A., 'Land Management in Ghana: Building on Tradition and Modernity'. P. 6 -7

committees. Law 152 equally provided that after first registration, effectiveness of subsequent transactions in land interests depend on its entry into the register. This means that unregistered disposals are void. Thus, the continued existence of customary land law, the common law of contract and rules of equity entails that enforceable rights in land may still exist outside the register, thereby making the register unreliable.⁶³⁸

Also, successful implementation and achievement of the stated goals of the registration exercise depends largely on the availability of efficient and effective management team, relevant logistic supports and procurement of the needed equipment for fast and accurate survey and production of maps and plans, as well as proper storage of the generated information. Unfortunately, the registration scheme was poorly funded and resourced, leading to shortage of trained personnel and other logistic constraints. There's also the unnecessary duplication and compartmentalisation of administrative duties and offices without conscious efforts at coordination. According to Kasanga and Kotey,

...implementation has suffered as a result of administrative compartmentalisation. The title and instruments registration systems have operated as distinct and parallel systems – the former by the Land Title Registry from Victoriaborg, the latter by the Lands Commission Secretariat from Cantonments – with no conscious effort at coordination. The title registration system has failed to build on the existing instruments registration system. The two systems have been entirely separate; the scale of site plans and the identification and numbering of parcels of land have both been different. Indeed, departmental jealousy, bickering and lack of cooperation have characterised relations between the two institutions...sporadic and uncoordinated registration has [also] robbed the system of its potential to achieve greater certainty and security.⁶³⁹

The issue of sporadic and non-systematic registrations led to situations where usufructuary interests in land are registered in situations where allodial titles are still being contested. One would have expected that all allodial titles to land to be systematically established and registered first before starting the registration of subsidiary rights. Such an uncoordinated process is prone to mistakes and fraud. The law also provided for anyone suspecting that his interest in land is being threatened to

⁶³⁸ Ibid.

⁶³⁹ Ibid.

raise objection to stop the registration process pending the determination and resolution of the source of concerns by the internal adjudicatory mechanism, and by extension, the courts if one feels dissatisfied with the decisions of the adjudicatory committee. The failure to provide for the inclusion of the individual committee members of the allodial groups who has rights to make grants in the registration have led to constant objections from some committee members for the clarification of their legal title rights over land grants. Thus, plethora of applications for the registration of allodial titles have been stalled and indefinitely stayed while litigations over this subject matter lingered, in most cases, up to the supreme court.⁶⁴⁰

Despite the failure of the State-led registration exercise in Ghana, recent research by Antwi-Agyei, Dougill, and Stringer in Ghana strongly argue for the need to revisit the question of land registration exercise in Ghana as they believe that successful implementation of the exercise is indispensable to the agitation for secure land rights of women and vulnerable members of the society, increased investment in agriculture, reduction of disputes and most particularly, household implementation of the climate adaptation strategies.⁶⁴¹ The fact that Ghanaian women also face discriminations in relation to their land rights, just like their Nigerian counterparts, must have informed the call for the revisiting of registration exercise. For instance, married women in Ghana do not have any stake in their family property, the extent of their contributions towards the acquisition, maintenance and development of the property notwithstanding. A woman's contributions in her husband's estate is merely a satisfaction of her pre-existing marital obligations and does not accord her a stake in the estate. According to Justice Ollenu in *Quartey v. Martey and Ors.*,⁶⁴²

...by customary law, it is the domestic responsibility of a man's wife and children to assist him in the carrying out of the duties of his station of life...the proceeds of this joint effort of man and wife and/or children, and any property which the man acquires with such proceeds, are by the customary law the individual property of the man.⁶⁴³

⁶⁴⁰ Rebecca Sittie, 'Land Title Registration –The Ghanaian Experience'. P. 8

⁶⁴¹ Antwi-Agyei, P. et al, 'Impacts of land tenure arrangements on the adaptive capacity of marginalized groups: The case of Ghana's Ejura Sekyedumase and Bongo districts'. (2015) Land Use Policy, 49, (203-212). P. 210

⁶⁴² [1959] Ghana L. Rep. 377

⁶⁴³ Ibid.

Efforts aimed at resuscitating the failed State-led compulsory land registration exercise in Ghana were made in 2002 through the launch of the Foundation for Building the Capital of the Poor (FBCP). The programme was developed by the Ghanaian Ministry of Justice with the support of Hernando De Soto's Institute for Liberty and Democracy (ILD), and the United Nations Development Programme (UNDP). The launching of the programme in September 2002 recorded the attendance of high-profile personalities like the then President of Ghana, J. A. Kufour, former president of America, Bill Clinton, Hernando De Soto and other notable dignitaries. It was believed that FBCP platform would serve as a lifeline to the ailing Ghanaian land registration exercise. The plan also was to establish a regional centre in Accra and use its platform to bring all land and assets in Ghana into the formal economic sector through registration, thereby giving title holders access to collaterals and credits, and thereafter use same platform as a launching pad to reach other countries within the region. However, since the launch of the programme, it has also made negligible impact as it has been unable to surmount those very challenges that marred the previous registration exercises. Thus, its stipulated goals remain elusive.⁶⁴⁴

Though the Lands Commission originally came into existence in 1971, however the 1992 Ghanaian Constitution re-invented its operations and scope as it provided for the establishment of National Land Commission along with 10 Regional Lands Commissions with the support of Lands commission secretariats. These were made manifest through the provisions of the Lands Commission Act of 1994 (Act 483). Article 258 (1) of the 1992 Constitution of Ghana listed the functions of the Lands Commission to include the management of public and vested lands, to advise the government, its subsidiaries and the traditional authorities on the approved policy frameworks for land developments, recommend to the national government policy guidelines for land use and capability, to advise and assist the government in the execution of its comprehensive land title programme, as well as perform other functions that might be assigned to it by the minister of land and forestry.⁶⁴⁵ Activities of the 10 regional subsidiaries of the commission are to be coordinated by the National Lands Commission. However, whereas the members of the National Lands Commission are to be appointed by the President, the members of the Regional Lands Commissions are appointed by the minister of lands and forestry.⁶⁴⁶ Thus, neither the traditional

⁶⁴⁴ Kojo Sebastian Amanor, 'Securing Land Rights in Ghana'. P. 126

⁶⁴⁵ Article 258 (1) of the 1992 Constitution of the republic of Ghana

⁶⁴⁶ Kasim Kasanga, 'Land administration Reforms and Social Differentiation'. P. 59

authorities whose stool lands were vested in the State nor the local populace has any impute to the management of their Stool land and the design of the policy framework for the development of their local environments.

However, the 1994 Act provided for the establishment of a central independent office of the Administrator of Stool Land in Accra. Just like the Land Valuation Board, the office of the Administrator of Stool Land was also to become an independent body with the mandate to collect rents and royalties from stool lands, pay the collected revenues into separate accounts and thereafter disburse same between the Stools, the traditional council and the local government areas (District Assemblies) where the stool land is located in accordance to new sharing formula of 25, 20 and 55 percent respectively. The creation of this office did not go down well with the traditional authorities who saw the move as an attempt to centralise control over functions that they have performed quite adequately at the local level in conjunction with the available regional land offices.⁶⁴⁷ Some analysts believe that this also amounts to needless duplication of duties.⁶⁴⁸

In addition to the above acts of exclusion, usurpation of traditional responsibilities and unnecessary duplication of administrative functions, the 1992 Constitution and the 1994 Act also introduced further measures that significantly affects the scope of the custodial authorities of the Chiefs and the rights of customary title holders. Article 267 of the constitution stipulates that for any dispossessions or developments on stool land to be valid, they must be certified by the Regional Lands Commission of the region where such lands are situated to ensure its conformity to the developmental policy plan of the region.⁶⁴⁹

Other decentralised and statutory institutions involved in land administration in Ghana include the District and Metropolitan assemblies, the Environmental Protection agency, the Land Survey Department, the National Development Planning Commission, the Town and Country Planning Department, and the Stool Lands Boundaries Settlement Commission. Each of these bodies were expected to perform some statutorily assigned land administrative functions. However, some only exist in names alone as they lack the operational capacity, as well as the legal and structural base to make meaningful

⁶⁴⁷ Ibid.

⁶⁴⁸ Kasanga, K. and Kotey, N. A., 'Land Management in Ghana: Building on Tradition and Modernity'. P. 7.

⁶⁴⁹ Kasim Kasanga, 'Land administration Reforms and Social Differentiation'. P. 59

contribution to development of effective and robust land governance in the state.⁶⁵⁰

These institutions have also been unable to effectively discharge their duties due to constant undue political meddling and some other unsurmountable constraints militating against the success of their operations.⁶⁵¹ Apart from the challenges associated with the unnecessary proliferation of land administration institutions, there also exist pieces of inconsistent legislations and judicial pronouncements on land matters which have significant impacts on the composition and effectiveness of the constitution, common law and customary legal provisions governing land in Ghana. Whereas some of these laws and pronouncements clarify various prevailing legal regimes, others confound them. In addition, there equally exist many contradictory judicial pronouncements emanating from courts of coordinate jurisdictions whose judgements carry equal legal forces. Some of the available land management statutes contradict the provisions of some sections of the 1992 Ghanaian constitution. These increase the chances of forum shopping and breed confusion which results in avoidable litigations and loss of revenue as various actors face the practical effects of these contradictions.

After decades of state-led piecemeal judicial, legal and policy measures, interventions and reforms in Ghanaian land sector with the resultant mixed outcomes, and in many instances, unnecessary duplication of duties, bureaucratic bottlenecks and negligible impacts on the agenda for sustainable equitable tenure regimes and robust land market economy, the Ghanaian government in 1999 mustered the political will to finally look into the possibility of overhauling the entire spectrum of its land administration framework by formulating a comprehensive National Land Policy framework with the support of international donor agencies like the World Bank, Canadian International Development Agencies (CIDA), and the Department for International Development (DFID).⁶⁵² The National Land policy exercise identified various shortcomings and constraints facing the Ghanaian land administration system, land ownerships patterns, tenure arrangements and its effects on land use and development in Ghana. It identified among other things that the system of land governance in Ghana lacks comprehensive

⁶⁵⁰ Kasanga, K. and Kotey, N. A., 'Land Management in Ghana: Building on Tradition and Modernity'. P. 9- 12

⁶⁵¹ Ubink, Janine, Legalising Customary land Tenure in Ghana: The case of Peri-Urban Kumasi, In J.M. Ubink, A.J. Hoekema, W.J. Assies (ed) *Legalising Land Rights: Local Practices, State Responses and Tenure Security in Africa, Asia and Latin America* (Leiden University Press, 2009) p. 183

⁶⁵² Kombat, C and Lambini, S. 'Land management in Ghana, challenges for climatic change'. P. 2.

land policy framework, relies on poorly drafted and outdated legislative principles, lacks adequate, effective and well-coordinated geographic information system, as well as the capacity and capability to initiate and carry out coordinated policy actions. On the legislative regime, the programme revealed the existence of plethora of lacunas, inconsistent and overlapping laws, and the duplication of policy provisions bothering on same subject matter, all of which create confusion and, in some instances, contradict the constitutional provisions. There were equally various policy directions and goals awaiting further elaborations and eventual translation into law.⁶⁵³ These identified shortcomings and challenges negatively impact on the land administration and development in Ghana. The outcome of the investigations, deliberations and recommendations of the 1999 National Land Policy programme precipitated the introduction of the Land Administration Project.

7.4: LAND ADMINISTRATION PROJECT (LAP)

LAP was introduced as part of the response to the policy recommendations from the National Land Policy programme for addressing critical issues that hinder land administrations in Ghana, particularly, the rise in land disputes in Ghana and the proliferation of land administration institutions and procedures which involves numerous statutory agencies and customary authorities. The expectation was for the project to provide a platform and a framework for the implementation of the provisions of the Land Policy and for tackling the identified challenges.⁶⁵⁴ LAP was envisaged to be a long-term ambitious land reform programme aimed at stimulating sustainable economic development, reduction of poverty and the promotion of socio-cultural stability by engendering robust improvement in tenurial equity and security. It also aims to harmonise and simplify land administration processes, as well as the processes of acquiring and transferring interests in land in Ghana.⁶⁵⁵ LAP constitutes a twenty-five years land administration reform programme which is to be carried out in phases.

The first phase of the LAP project which was launched in 2003 was concluded in 2011. The object of this phase was to “undertake land policy and institutional reforms and key

⁶⁵³ Amewu, p. J. ‘Land Bill 2017. Ministry of Land and Natural Resources’. P. 6

⁶⁵⁴ Odame Lardi. W ‘Ghana’s Land Administration Project: Accomplishments, Impacts and the Way Ahead’. (2011) World Bank Conference on Land and Poverty Reduction, the World Bank Washington D.C. 18- 20 April 2011.

<<file:///C:/Users/USER/Documents/GHANA'S%20LAND%20ADMINISTRATION%20PROJECT%20ACCOMPLISHMENTS,%20IMPACTS,%20AND%20THE%20WAY%20AHEAD.pdf>>. Accessed 05/03/18

⁶⁵⁵ Amewu, p. J. ‘Land Bill 2017. Ministry of Land and Natural Resources’.

land administration pilots for laying the foundation for a sustainable decentralized land administration system that is fair, efficient, cost-effective and that assures land tenure security”.⁶⁵⁶ This phase started by setting out modalities for the introduction of new comprehensive Land Bill to consolidate, update and harmonise the divergent and uncoordinated legal frameworks governing land administration in the state. It called for a complete study and review of the available legal regimes on land. The outcome of this deep and systematic review was subjected to further extensive debates and reviews by the Ghanaian judiciary and other stakeholders. In 2007, a National Land Forum was organised to identify, brainstorm and smoothen all areas of critical concerns in the new Land Bill. In addition to the above, key judgements on equitable land rights, and various judicial processes bothering on land administration, opinions of land administrators, judges and other related judicial personnel were also sought, collated and considered to form part of the policy recommendations for the improvement of the legal cum judicial framework for efficient land governance in Ghana. Towards the final stage of the phase 1 of the LAP, Land Governance Assessment Framework (LGAF) was concurrently conducted by land experts to examine the entire spectrum of challenges facing land governance in Ghana with the aim of identifying opportunities and priorities for reform. The expert recommendations from the LGAF project were acknowledged to be indispensable for the achievement of improved and modernised legal framework for effective land administration in Ghana, and form part of the core issues for consideration in the second phase of the LAP programme. Thus, LAP phase two identified the need for the introduction of robust, consolidated and up-to-date legal framework that is adaptable to modern methods of land management and conveyancing, which would help in defining the interface between state and customary land administration, and form part of the new infrastructural provisions for reliable, transparent, cost effective and efficient land administration system in Ghana.⁶⁵⁷

7.5: Conclusion.

This chapter has taken a holistic view at the historical synopsis of the Ghanaian land administration and tenure system from the pre-colonial to the contemporary era. It could be inferred from the analysis so far that most of the state-led interventions in land administration in Ghana were centred on divergent attempts at either taking absolute control over land or the regulation of customary land management systems in the

⁶⁵⁶Ibid. p. 1

⁶⁵⁷ Ibid. P. 1- 2

country. It is also obvious that the constitution provided for the recognition of the customary land management institutions and the roles played by the chiefs or heads of the communities/families. These were supplemented by various state institutions created for the regulation of land matters, and to act as checks on stool land management. Unfortunately, these institutions have been unable to effectively discharge their duties due to constant undue political meddling and some other unsurmountable constraints militating against the success of their operations.

As a result, there have been calls for the introduction of administrative land reform measures capable of regularising and harmonising land management responsibilities within the state and the customary institutions. The intention is to come up with a comprehensive land management mechanism that can bridge the administrative chasm between the available formal and customary systems, thereby creating a more transparent, responsive and efficient land administration system reflective of the local environments and is cost effective; a true hybridity of the customary authorities and the state institutions. This gave rise to the introduction of the Ghanaian Land Administration Programme (LAP) which has shown great sign of success and improvement both from the format for its conception, adoption and on-going implementations.

CHAPTER 8: COMPARISON OF THE NIGERIAN AND GHANAIA LAND REFORMS

8.1: INTRODUCTION

This chapter analyses and evaluates the structures, processes and outcomes of the land reform interventions in Nigeria and Ghana from a comparative perspective as examined in the previous chapters of this work. This is done against the backdrop of the definitive elements of the impact evaluation tool known as “Responsible Land Management (RLM)” framework. Factors that informed the choices of Ghana as a comparator state, and the RLM as preferred toolkit were also clearly mapped out and explained within the chapter. The outcome is expected to provide using guide towards the development of effective land reform programme for the Nigerian state.

8.2: WHY GHANA AS A COMPARATOR STATE?.

Considerable efforts have been depicted towards the documentation of theories, forms and processes of land reforms across various African states. Despite these efforts, the dream of having a generally applicable guideline, toolkits or manuals for land reform across African continent remains a mirage as countries’ preferred reform policies are informed by the peculiarities of their definitive fundamentals.⁶⁵⁸ These stems from their historical synopsis comprising the totality of each states’ colonial and political experiences, as well as the socio-cultural, ethnic/tribal and religious composition of the states. In addition to the above is the type and form of reform measures that have been carried out elsewhere by other states facing similar challenges. Also, the successes or otherwise of such reform exercises often influence the policy choices of other states.⁶⁵⁹ To this effect, the choice of both the preferred state actors and type of tenure reform programmes to be examined in the context of this work is informed by these factors mentioned above. There must be points of convergence and established socio-cultural, religious and political semblance between Nigerian state and any preferred comparator state(s) believed to has either recorded commendable successes in their tenure reforms programmes or has adopted policy measures that provide ideal resilience in the face of tenurial challenges similar to those found in Nigeria. On this note, the state of Ghana stands out not just because both countries are in West Africa, rather because of

⁶⁵⁸ Cotula, L., et al., ‘Land Tenure and Administration in Africa’. P. 1.

⁶⁵⁹ Ibid.

numerous similarities in their composition, structures, as well as past and continuing experiences.

Nigeria and Ghana are multi-cultural, ethnic, tribal, religious and linguistic states with common colonial history,⁶⁶⁰ as well as shared relics of colonialism.⁶⁶¹ Both countries have pluralistic legal system and tenure regimes; have similar structural attribute of north-south dichotomy; face similar challenges of customary law, multiple tenurial system, discriminatory tenure arrangements, tenure insecurity and clash of culture, and had adopted various reform measures at different times in attempts to resolve the impasse. Both countries equally share similar political experimentations ranging from colonialism to independence, military coups and return to democracy. That said, it should be noted that there also exist some variables that might be differential in the light of this examination but need not to be ignored while analysing the outcomes of tenure reforms within these states. These variables include the state's population, land mass⁶⁶² and difference in number of ethnic groups.⁶⁶³ The nature, dynamics, correlative relationships and the outcome of the tenure reform programmes of Nigeria and Ghana will be functionally and analytically analysed afterwards.⁶⁶⁴ This will enable us to ascertain the problems, prospects as well as lessons to be learned from their past and on-going tenure reform exercises.

8.3: WHY THE RESPONSIBLE LAND MANAGEMENT (RLM) FRAMEWORK

Prior to the adoption of the above toolkit for measuring the desirability, worthiness and effectiveness of land reform policies, processes and outcomes in Nigeria and Ghana, the

⁶⁶⁰ Both countries were colonised by the British colonial authority using the same system of administration (Indirect rule) with similar outcomes (Indirect rule was a success in the northern part of Nigeria and Ghana but failed within the southern parts of both countries). Though whereas Ghana had her independence in 1957, Nigeria had her independence in 1960.

⁶⁶¹ For full analysis of colonialism and its aftermaths in Africa, see chapter 2 of this paper.

⁶⁶² The population of Ghana was put at 27,499,924 as against Nigeria's 190,632,261 inhabitants. Also, Ghana's total land mass is 238,533 sq. km., while that of Nigeria is 923,768 sq. km. see CIA World Factbook 2018.

<<https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>>. Accessed 15/01/2018.

⁶⁶³ Ghana has around 90 ethnic groups while Nigeria has over 500 ethnic groups.

⁶⁶⁴ For more information on analytical and functional methods of comparative law, see Mark Van Hoecke; Methodology of Comparative Legal Research.

<<https://www.bjutijdschriften.nl/tijdschrift/lawandmethod/2015/12/RENM-D-14-00001.pdf>>. Accessed 10/02/2018.

FIG land policy measuring toolkit which bothers on 7 key evaluation matrixes was given serious considerations. The 7 definitive elements of this indicator are “Security, Clarity/Simplicity, Timeliness, Fairness, Accessibility, Cost and Sustainability”.⁶⁶⁵ The idea of using this toolkit was particularly hampered by considerations relating to the real cost of reform policies and implementations. In consideration of paucity of reliable data, accountability, weakness of institutions, institutional corruption and bureaucratic bottlenecks in Nigeria and Ghana; as is the case also in many developing countries, it will be difficult to ascertain the actual cost of reform programmes carried out in these countries. In the same vein, elements of the Indicator 1.4.2 of the SDG1 which provides for the successes and desirability of States’ policy preferences and reform options to be measured against the backdrops of the “proportion of total adult population with secure tenure rights to land, with legally recognised documentation, and who perceive their rights to land as secure, by sex and by type of tenure” was also considered.⁶⁶⁶

however, in recognition of the fact that the essence of interventions in land managements and administrations is to initiate and execute sets of coordinated changes in response to perceived needs of the land users and constraints militating against the use, enjoyment and development of the land and other natural resources. The need for the adoption of “responsible” approaches to land administration and tenure reformations arose as a direct response to inherent lacunas and ineffectiveness of conventional reform approaches to provide the much-needed answers and solutions to the challenges of land administration and tenure security particularly in developing countries. This would provide for a paradigm shift from the historical perspective on land management strategy which equates tenure security to the availability of state-based institutions responsible for the management of land resources through large-volume and often centralised registers and databases.⁶⁶⁷

Thus, for any reform intervention in land use and its management to be adjudged successful, particularly in heterogenous societies like Nigeria, the beneficiaries of such reform intervention must identify with and feel at ease with not only the outcome of the exercise, but also with the procedures and the structures or institutions responsible for

⁶⁶⁵ FIG Statement on the Cadastre. No. 11 (FIG Publication 2014). P. 6.11.
<<http://www.fig.net/resources/publications/figpub/pub11/figpub11.asp#6.11>>. Accessed 10/04/2018

⁶⁶⁶ GLTN/UN-HABITAT; Measuring Land Tenure Security with SDG Indicator 1.4.2.

⁶⁶⁷ Walter T. et al, ‘Towards Responsible Land Administration’. P. 4- 5

the execution and maintenance of the intervention policies and outcomes.⁶⁶⁸ Even as the sustainability of the processes and outcomes of the intervention is largely dependent upon the level of involvement of all the stakeholders, recognition of the peculiarities of pre-existing local institutions, legitimate socio-cultural practices, as well as the extent to which such intervention addresses the concerns and needs of the people.

In other words, any good and functional land reform or intervention exercise must be “responsible” in its form, processes and practices in order to satisfy the perceived needs and meet the expectations of the target audience; allay the fears and concerns of the vulnerable members of the target group, particularly women and children, as well as bring about positive changes to their experiences. In addition to being responsive, such an exercise must also be “fit-for-purpose” to reflect local nuances and sentiments thereby engendering social cohesion, trust and respect for the people’s way of life and satisfaction for the concerned. The 8R matrixes of the Responsible Land Management (RLM) framework appears more elaborate, encompassing and appropriate in the light of above considerations, thus setting itself apart as the most appropriate land tool suitable for the prevailing Nigerian circumstances. Therefore, the success, desirability or otherwise of land reform exercises in Nigeria and Ghana will be examined and evaluated using the RLM framework as developed by Chigbu et al.⁶⁶⁹ A more in-depth analysis and deeper understanding of this concept was further offered by Jaap Zevenbergen et al.⁶⁷⁰

8.4: UNDERSTANDING THE CONCEPT OF RESPONSIBLE LAND MANAGEMENT (RLM)

The concept of RLM provides for the recognition of the prevailing socio-economic, religious, customary and environmental dynamics and peculiarities of the society before the formulation, adoption and implementation of any land administration programme. These definitive elements which reflect social sentiments, nuances and practical realities

⁶⁶⁸ Ameyaw, Prince et al, ‘Responsible Land Management: The Basis for Evaluating Customary Land Management in Dormaa Ahenkro, in Ghana’ (2018) Paper Presented at the World 2018 World Bank Conference on Land and Poverty, The World Bank, Washington DC. P. 3.

<[file:///C:/Users/USER/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/Chigbu_680%20\(1\).pdf](file:///C:/Users/USER/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/Chigbu_680%20(1).pdf)>. Accessed 08/08/2018

⁶⁶⁹ de Vries, T. W., & Chigbu, E. U. ‘Responsible land management- Concept and application in a territorial rural context’, (2017). P. 72
https://www.researchgate.net/publication/316667193_Responsible_Land_Management_-_Concept_and_application_in_a_territorial_rural_context/stats. Accessed 20/12/2018.

⁶⁷⁰ Walter T. et al, ‘Towards Responsible Land Administration’. P. 3- 13

of any given society must not only be considered, but also be factorised into the land administration policies of states and governments in order to guarantee true improvements in values, quality of lives and the economic well-being of the target beneficiaries. Improvements in qualities and values can manifest in the form of increased tenure security, better quality of life, equitable distribution of land and other natural resources, equal access to opportunities, improved level of trust and social cohesion, as well as higher participation in social and civic activities. On the economic well-being of the people, improvement can manifest in the form of increase in net values, tax rates and property values. These reflect changes and improvements in both private and public values. Reform interventions in the form of land titling and registration, land valuation and survey, land information system development, dispute resolution and land recordation are examples of land administration interventions that can be carried out under the guide of the RLM framework for the achievement of sustainable improvements in public and private values.⁶⁷¹

The constituents of RLM construct manifests in the form of eight-legged indicators presented as the “8Rs”.⁶⁷² These constituents are employed in attempts to determine the level of responsiveness of any land intervention exercise to the needs of the target beneficiaries, the effectiveness of the policy measures in tackling the perceived challenges and the sustainability of the outcomes of the exercise. The evaluation indicator constituting the “8Rs” intervention construct are represented as “Responsive, Resilience, Robust, Reliable, Respected, Reflexive, Retraceable and Recognizable”.⁶⁷³

To be “Responsive” means to be interactive. Responsible reform programmes must create avenues for interactions and feedbacks amongst all stakeholders from the point of conception through to the final implementation as against direct and forceful imposition of policies and processes from one party or the authority to the public without any considerations to the reactions and thoughts of other stakeholders. To be “Resilient” means that the structures must be strong enough to stand the onslaught of all challenges. The preferred structures must be firm enough not to crumble under the weight of challenges that may arise and threaten the survival of the project; To be “Robust” entails that the operational channels must be well established and clearly coordinated for policy execution. It must be well established, diligently followed and developed into strong

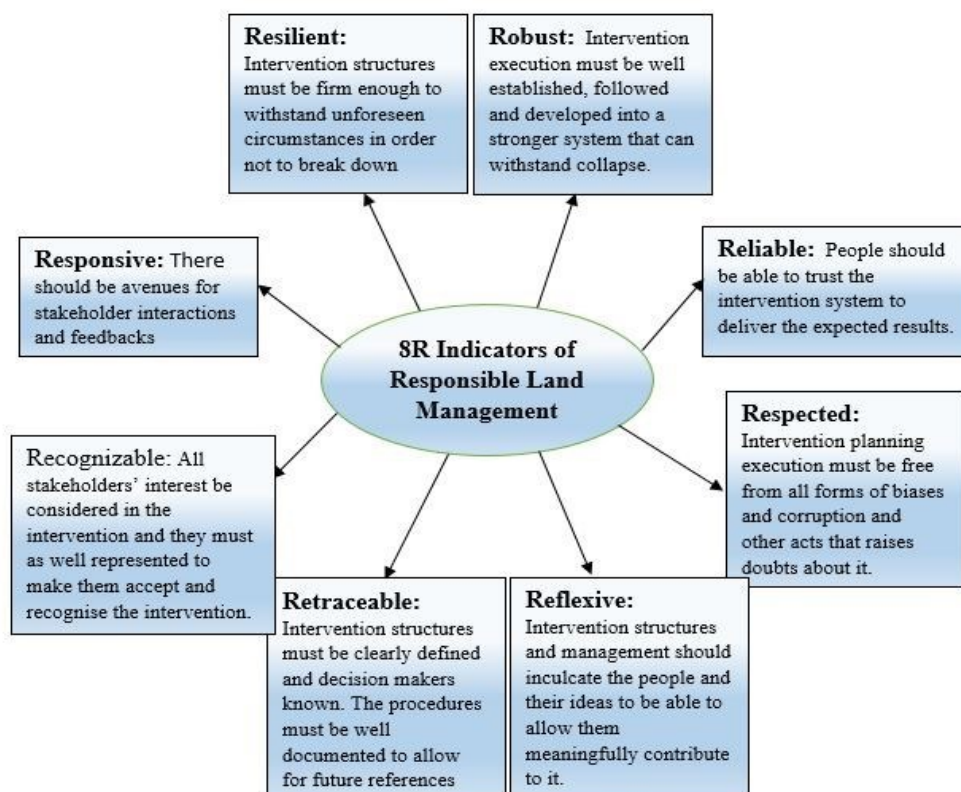
⁶⁷¹ Ameyaw, Prince et al., ‘Responsible land management: the basis for evaluating customary land management in Dormaa Ahenkro, in Ghana’. p. 5

⁶⁷² de Vries, T. W., & Chigbu, E. U. ‘Responsible land management’. P. 72

⁶⁷³ See the 8R Matrix Indicators for Responsible Land Management (Fig. iv below).

system capable of withstanding collapse; To be “Reliable” on the other hand means that the people should be able to have full trust and confidence on the ability of the policy measures and structures to deliver on their promises, goals and meet peoples’ needs and expectations; To be “Respected” means that the intervention must command the respect of the people. For this to be, such a programme must be free from all forms of biases, corruption and other vices capable of eliciting doubts in the minds of the people over the genuineness of the intentions behind the reform programme; To be “Reflexive” indicates that both the structures and the management apparatus should be able to involve the people and their ideas so as to enable them to make meaningful contributions to the entire operations, knowing fully that anything to the contrary would have direct adverse effect on them. To be “Retraceable” means that intervention structures must be clearly mapped out, decision makers known, and procedures well developed to allow for future references; To be “Recognisable” means that the opinions of all stakeholders must not only be considered, the people should always be able to recognise the effects of their ideas and the structures of the programme.⁶⁷⁴

Fig. iv: The 8R Matrix Indicators for Responsible Land Management.



Source: (de Vries, T. W., & Chigbu, E. U., 2017)

⁶⁷⁴ Ibid.

Therefore, to determine the level of responsiveness of the land reform exercises in Nigeria and Ghana to the needs and concerns of the people, this paper intends to evaluate the interventions using the above “8R” indicators, while the actual aspects to be evaluated are the structures in place for the exercise, the process and the outcome of the reform exercises. “Structure” represents all structures that have been created for carrying out intervention exercise. These are institutional and technical frameworks for policy execution which must be valid and effective for intervention goals attainment. “Process” on the other hand implies the preferred procedure or approaches for the execution of policies of interventions which must be clearly mapped out, consistent and retraceable. “Outcome” represents the final implications and effects of the intervention programme on the target beneficiaries. As the essence of reforms or interventions is to effect changes and create new results, these changes and results constitute the outcome of such action.⁶⁷⁵

8.5: EVALUATING THE NIGERIAN AND GHANAIAAN LAND REFORM PROGRAMMES USING THE 8R MATRIX INDICATORS.

Below is a comparative evaluation of the recent land reform exercises that were carried out in Nigeria and Ghana. In this analysis, with respect to Nigerian land reform exercises, attention is restricted to the provisions and practices of the Land Use Act of 1978 because it remains the only successful land reform exercise that was carried out to a logical conclusion in recent memory and forms the basis upon which land management and administration in Nigeria is currently anchored. This choice is also informed by the fact that the Act remains operational in Nigeria till date as the activities of the Presidential Technical Committee on Land Reform (PTCLR) could not go beyond the conception stage due to regime change, its resultant policy summersault and lack of continuity. In the case of Ghana, attention will be focused on the recent Land Administration Project (LAP) as examined in chapter seven of this work and its aftermaths. LAP constitutes the prevailing authority for the regulation and administration of all land related matters in Ghana till date.

Table 1.

8R MATRIX INDICATORS	NIGERIA	GHANA

⁶⁷⁵ Ameyaw, Prince & Dachaga, Walter & Chigbu, Uchendu & De Vries, Walter & Abedi, Lewis. (2018). Responsible land management. P. 6

RESPONSIVE	There was little or no room for consultations and feedbacks among the stakeholders as the entire process was conceived and superintended by the military government. Even the majority opinions of the land reform committee were ignored by the military government at the point of adoption of the reform policies. ⁶⁷⁶	There were deep and robust consultations with various stakeholders at different levels of the reform processes, its adoption and eventual implementation. There were also additional reviews and adjustments to accommodate the concerns raised by the stakeholders during the consultations and feedbacks. ⁶⁷⁷
RESILIENCE	The structures for the land administration and reform were ill equipped to withstand unforeseen circumstances, particularly the unexpected consequences arising from non-recognition of the dept and functionalities of customary rules, and proscription of some customary practices, established traditional rules of engagement and pre-existing traditional institutions. ⁶⁷⁸ Also, lack of structures for capacity building make the outcome unsustainable. ⁶⁷⁹	The full recognition of the functionalities of customary tenurial rules and traditional institutions helped to curtail the amount of infractions that would have trailed the reform exercise as the preferred structures are not alien to the people. The recognition of the need for capacity building, and the idea of training, re-training and involving locals in policy execution gave the system a stronger and enduring outlook. ⁶⁸⁰
ROBUST	Intervention executions were disjointed and ill coordinated. For instance, States and Local Government Authorities were authorised by the Act to establish the Land Use Allocation Committees and the	Execution of the intervention was swift, smooth and coordinated following the establishment of CLS with assistance and guideline from the Office of the Administrator of Stool lands

⁶⁷⁶ Smith, I. O, *Practical Approach to Law of Real Property in Nigeria*. P. 472- 473; Layi, Babatunde, 'The Future of the Land Use Decree', p. 220-226.

⁶⁷⁷ Amewu, p. J. 'Land Bill 2017. Ministry of Land and Natural Resources'. P. 1- 2

⁶⁷⁸ See pages 105- 106 of this thesis

⁶⁷⁹ It is obvious from the historical analysis of the Nigerian land reform experimentations that at no time was capacity building or the training of personnel were given its deserved attention.

⁶⁸⁰ Clauses 14- 19 in Amewu, p. J. 'Land Bill 2017. Ministry of Land and Natural Resources'. P. 32-35

	Land Allocation Advisory Committees at the states and local government areas respectively to take over the management and control of land matters in their localities with no provisions for guidance, technical assistance and capacity building from the central government. Thus, decades down the line, many States and Local Governments are yet to either establish the land boards, or any functional body. ⁶⁸¹	and the Land Commission. Such a synergy helped in the development of strong and durable system for the management of rural lands and other natural resources. ⁶⁸²
RELIABLE	Lack of wider consultation during the formulation and adoption of the land administration policies and the government's failure to recognise the important roles played by customary institutions in land administration and dispute resolution made people not to have confidence in the exercise. More so, the inability of the intervention to meet local needs, reflect local sentiments and resolve local challenges made it less attractive to the local populace.	Full involvement of all stakeholders and the recognition of the functionalities of traditional institutions in land administrations and dispute resolutions make the people have confidence in its ability to respect their social sentiments and meet their peculiar needs. The visible positive outcomes and its effects on people's livelihood, particularly women and their land rights encourage people to have confidence in the system, policies and the operational institutions.
RESPECTED	Non-participatory nature of the entire reform system, its top-down approach and total exclusion of the already existing customary institutions undermine its value before the local people and communities who feel alienated. Thus,	Adequate involvement of the people, communities and other stakeholders during the processes of policy formulation, adoption and execution gave them the confidence and satisfaction that their opinions and

⁶⁸¹ See pages 109- 110 of this thesis

⁶⁸² See pages 129-130, 141-142, and 152 of this thesis

	traditional rulers till date refused to relinquish the responsibilities of land administration, even as most rural dwellers refuse to subject themselves to set of rules and regulation that they weren't part of its making	contributions drive the intervention agenda. Thus, the intervention is liable to be respected by the people.
REFLEXIVE	The top-down nature of the intervention exercise made it that people were not consulted, neither were their opinions and feedbacks sought after and made to count during the policy formulation and eventual adoption of the reform package.	All stakeholders were dully consulted, their opinions and feedback were sought, aggregated and made to shape the outcome of the reform policies. Also, members of the communities are being trained and retrained to be part of the execution of the reform agenda.
RETREACABLE	Corruption, administrative laxity lack of and weakness of institutions of administration where available, means that outcomes are subjective. There is no guarantee that one would get a predictable outcome even in situations where the variables are similar. In addition, Lack of training and retraining of land administration officers compounds the woes.	The system of operation is in the public domain as the people are conversant with the procedures and rules of engagement. The institutions of administration are being regulated by the LC and OASL, with staff members undergoing periodic trainings. This reduces the chances of mistakes, deceits and subjective outcomes in service delivery.
RECOGNIZABLE	The adopted system of administration is alien to the communities and rural dwellers whose customary way of land administration and management are discredited and proscribed by the intervention. Their interests weren't considered throughout the process, thus, their inability to recognise, respect and subject themselves to the	Customary ways of land administration were recognised and validated, even as all stakeholders' interests were sought, considered and made to count during the processes of formulation, adoption and execution of the intervention package. Thus, the willingness to recognise, respect and abide by the

	provisions of the reform package	provisions of the intervention package.
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Comparative Evaluation of Nigerian and Ghanaian Land reforms Using the 8R Matrix Indicator

8.6: KEY LESSONS FROM THE COMPARATIVE ANALYSIS

Above analysis clearly shows that the Nigerian land intervention exercise failed to conform to the basic operational principles through the processes of policy formulation, adoption and eventual implementation of the reform policies. This, among other things, accounts for the failure of the intervention to achieve its stated goal, thus validating the urgent need and calls for a fresh responsible and people-oriented intervention exercise that would place the needs of common Nigerians at the centre of its goals.

The Ghanaian template may be far from being in a state of Eldorado as it is admittedly a work in progress, however, analysis so far has shown that there are lots of takeaways for Nigeria and other countries hoping to embark on land reform agenda, with the aim of enthroning equitable land administration system and tenure security for all, particularly for women and other vulnerable groups. The actual goals and main achievements of the LAP programme that are particularly of great interest to this work, and worthy of consideration by Nigeria and other African States desirous of embarking on new land reforms exercises are;

- i. Equitable land rights for spouses and gender empowerment: The reform provides for all valuable acquisitions and conveyance of property for valuable considerations by spouses during marriages to be in the name of the spouses, and where such property is already conveyed to only one of the spouses, such property should be presumed jointly owned property by the spouses as “tenants in common”. Thus, all property acquired while marriages are still subsisting are to be registered in the names of the spouses except in situations where contrary intentions are expressed.⁶⁸³ More so, Clause 44 of the Land Bill provides that prior consent of the spouses must be sought and duly secured before any further transactions or disposition of the property in question. Such consent shall not also be unreasonably withheld.⁶⁸⁴ This reflects the position and outcome of various recent court rulings against unequitable customary practices in Ghana that discriminate against women’s property right on the grounds of their gender.

⁶⁸³ See Clause 35 (3) & (4) in Amewu, p. J. ‘Land Bill 2017. Ministry of Land and Natural Resources’.

⁶⁸⁴ Ibid. P. 44.

This is also in tandem with the provisions of Article 22 of the 1992 Ghanaian constitution, and international best practices.⁶⁸⁵ Making legal provisions for statutory recognition of spousal property rights help in strengthening the position of women during and after marriages, insulates these rights from future male chauvinistic and discriminatory policy preferences, as well as undue political and judicial meddling. It also accords women their rightful status as equal partners in the ownership and management of family lands as against the rule or practices in Nigeria that deny spousal rights of inheritance, accommodate the act of women being regarded as part of the chattel to be owned, managed and shared at the demise of the husband. This provision equally defeats the unfortunate act of consolidating patriarchy and past and ongoing injustices of women disinheritance through conventional registration of land titles on husbands' names alone, the contributions of wives in the acquisition, improvement and maintenance of the property notwithstanding.

- ii. Prompt payment of compensation, due process and fair valuation during expropriations: Unjust expropriation without due process, poor valuation and lack of adequate compensation constitutes a great burden to the poor and marginalised groups like women, children, indigenous people and local communities.⁶⁸⁶ following the above problems, the LAP reform introduced desirable changes in relation to land expropriation, valuation and modalities for compensations in land administration in Ghana. It sought to tackle the unfortunate incidents of abuse of the doctrines of “overriding national interest” and “eminent domain” in land expropriations⁶⁸⁷ by clearly delineating the purposes under which land may be expropriated, and made statutory provisions for prompt, fair and adequate compensation. On prompt and adequate payment, it made provision for the establishment of interest yielding escrow account into which all monies for compensation are to be paid before the commencement of any compulsory acquisition. It also clearly sets out timeline for the stages in the processes of expropriations, including periods of notifications and consultations

⁶⁸⁵ Ibid. P. 2

⁶⁸⁶ Various Ghanaian administrations, traditional institutions and Chiefs have been accused of usurping the privileges of the doctrine of eminent domain for rent extraction for bureaucratic and political elites, and the expropriation of lands belonging to the communities and ordinary citizens without compensations or provision for alternative lands. See Kojo Sebastian Amanor, ‘Securing Land Rights in Ghana’. P. 98

⁶⁸⁷ Ibid.

with the affected persons, and provided for legal and other expert assistance to be given to the vulnerable members of the affected groups.⁶⁸⁸ It calls for adoption of “Fair Market Value (FMV)”⁶⁸⁹ approach in the assessment of value of lands facing compulsory acquisition, and provides for compensations covering costs and damages to be paid to the affected persons from the escrow account in case of withdrawal from the acquisition process by the government. Innovative measure of this nature, if adopted in Nigeria, would be of great importance, and would help in ameliorating the sufferings of women and other vulnerable members of the society who suffer untold hardship and dehumanisations following compulsory acquisitions in Nigeria. Several researches on land expropriation and payment of compensations in Nigeria reveal that compensation and resettlement packages offered to land owners in cases of expropriation are slow to come, grossly insufficient to cover their loss, maintain standard of living or purchase alternative land. They are also left with no incentive for independent appeal even as most of the expropriated lands are often not used for the public purposes for which they were acquired.⁶⁹⁰

However, it is worthy to point out that the FMV system adopted by the current Ghanaian reform project for the evaluation of compulsorily expropriated lands falls short of international best practices⁶⁹¹ and appears grossly inadequate to assuage the pains and loss suffered by customary land owners and users whose lands have been expropriated, as such system of valuation does not cover other non-market values of African lands like the socio-cultural, religious, spiritual and environmental values of African lands as examined in chapter three of this work.

- iii. Electronic conveyancing; following recent developments and advancements in technology and ICT, the new reform introduced electronic conveyancing to fast-

⁶⁸⁸ Amewu, p. J. ‘Land Bill 2017. Ministry of Land and Natural Resources’. P. 5

⁶⁸⁹ “Fair Market Value” is defined as the amount of money a willing seller would be ready to sell and a willing buyer would accept in an open market.

⁶⁹⁰ Van Eerd, M. and Banerjee, B, ‘Evictions, Acquisition, Expropriation and Compensation: Practices and Selected Case Studies’. United Nations Human Settlements Programme: Working Paper 1, Nairobi, Kenya, 2013. [[Google Scholar](#)]; see also The World Bank; Land Governance Assessment Framework Final Report: Nigeria; World Bank: Washington, DC, USA, 2011; p. 12. [[Google Scholar](#)]

⁶⁹¹ UN-FAO, ‘Voluntary Guidelines on the Responsible Governance of tenure of Land, Fisheries and Forests in the context of food security’. (2012) Section 18(2). <<http://www.fao.org/docrep/016/i2801e/i2801e.pdf>>. Accessed 08/08/2018

track the processes of conveyancing and make same accessible. The reform aims to create framework that would enable the transfer and registration of interests electronically. Thus, electronic conveyancing is hoped to become the dominant method for the recordation and registration of interests and transactions in lands in no distant time and would reduce the delays and unnecessary bureaucracies that militate against fast and successful registration of land rights and interests in the state.⁶⁹²

- iv. Establishment of Customary Land Secretariats (CLS); The reform made provisions for the establishment of CLS to manage and administer customary lands with guidance and assistance from the Land Commission (LC) and the Office of the Administrator of Stool Lands (OASL). It stipulated the functions, structure, power and source of revenue for smooth running of CLS.⁶⁹³ The CLS among other things is to identify and assess all land rights and tenure typologies operational within the communities under its command, determine the level of security and vulnerability of each tenure arrangement, maintain up to date record of all statutorily recognised and socially legitimate interests in land, keep information on the hierarchy of interests in land, as well as register every land transaction within the area of operation of the secretariat, keep an up to date record on all land matters and submit same to LC and OASL every six months. This decentralization of land registers makes interests recordation, title registration and access to land information easy, fast, accessible and affordable.⁶⁹⁴ CLS also facilitates settlement of land disputes through Alternative Dispute Resolution, sensitise and educate the rural public on all land related matters, as well as engineer the participation of the local population and communities in preparation of local plans. The members of staff of the CLS are to be appointed on merit, in consideration of gender representation and best human resource management practise.⁶⁹⁵ This signifies a recognition of the unique features of customary tenure system and the important roles played by

⁶⁹² Amewu, p. J. 'Land Bill 2017. Ministry of Land and Natural Resources'. P. 62 & 63

⁶⁹³ Clauses 14- 19 of the Ghana Land bill 2017. Ibid. P. 32-35

⁶⁹⁴ W. Odame Larbi; Ghana's Land Administration Project: Accomplishments, Impacts and the Way Ahead. World Bank Conference on Land and Poverty Reduction. The World Bank, Washington D.C. 18 – 20 APRIL 2011. P. 6.

<<file:///C:/Users/USER/Documents/GHANA'S%20LAND%20ADMINISTRATION%20PROJECT%20ACCOMPLISHMENTS,%20IMPACTS,%20AND%20THE%20WAY%20AHEAD.pdf>>. Accessed 08/08/2018

⁶⁹⁵ Ibid.

customary rights and traditional institutions in land administration particularly in rural communities where custom and tradition regulate virtually every aspect of the peoples' life. These customary provisions have in many instances shown that they can also provide secure rights to women and other vulnerable members of the society. Thus, the need for the establishment of special institutions to manage, regulate, assist and standardise their operations.

- v. Infinite enjoyment of usufructuary interests; The reform provides that usufructuary interests enjoyed by indigenes should not be granted for a specified duration.⁶⁹⁶ This is contrary to what is obtainable in Nigeria where "Certificate of Occupancy" is programmed to last for 99 years (commonly known as "99 years of unexpired lease").⁶⁹⁷ There is this fear that if nothing is done to change this legal prescription, many Nigerians, including women and other vulnerable members of the society with mostly secondary and non-registrable interests in land, and particularly people who may be unable to meet the requirements for recertification or renewal of "Certificate of Occupancy" at the expiration of the period of the grant will lose their land rights or become illegal occupants on their lands.
- vi. Statutory recognition of varying degrees of tenure rights on a continuum; The reform package also provided for the recognition and respect for the various interests in land, including usufructuary and other secondary tenurial interests that enjoy at least social legitimacy in relation to the customs, traditions and practices of the communities, provided that such arrangements do not discriminate on grounds of gender, race, colour, religion, creed, ethnic origin, as well as social or economic status. This is in line with the provisions of article 17 of the Ghanaian constitution, with the allodial interest held either by private individuals, families, clan, stool or skin regarded as the highest and strongest tenurial right on the continuum of prevailing rights and interests.⁶⁹⁸ This provision also conforms with the definitive principles of the "Continuum of Land Rights Concept".⁶⁹⁹ It should equally be recalled that the Land Tittle

⁶⁹⁶ Ibid. p. 7

⁶⁹⁷ Tolu Ogunlesi, 'Who Owns the Land in Nigeria'. Factsheet, African Check'. 25th Nov. 2015. <<https://africacheck.org/factsheets/factsheet-who-owns-the-land-in-nigeria/>>. Accessed 12/08/2018

⁶⁹⁸ Amewu, p. J. 'Land Bill 2017. Ministry of Land and Natural Resources'. p. 27-29

⁶⁹⁹ For full analysis of the principles of the "Continuum of Land Rights" concept, see chapter 9 of this paper.

Registration Law of 1986 (PNDCL 152) has already provided for the registration of both the customary law and common law tenure systems in Ghana (both deeds and titles became registrable). This means that recognised and registrable interests in land in Ghana comprises allodial title, usufruct or customary law freehold, freehold, leasehold, customary tenancies and mineral licences.⁷⁰⁰ In addition, land titles held by stools, skins, clans and families were to be registered in the corporate name of the group. Thus, the Ghanaian template accords all land tenure systems and interests full recognition within the provisions of the extant laws.

- vii. Vesting of land rights and responsibilities on the customary institution: The reform re-affirms the vesting of powers to own and administer lands on the customary institutions of Chiefs, Stools, Skins, Tendana and families, and re-emphasised the fiduciary nature of their positions and responsibilities. It provided formalities for divesting the remaining lands under the control of the government back to the communities within which they are located. This is contrary to the situation in Nigeria where the Act empowered the Central Government to vest the ownership and control of all lands in the country to itself and its subsidiaries to the exclusion of the traditional institutions that were formerly in charge of land management and administration in the country.
- viii. Another LAP initiative worth mentioning is the provision of modalities for addressing the problem of disparity in the collection and disbursement of revenues from all lands in Ghana. The unjust system for the collection and disbursement of revenues accruing from land which was in place before the adoption of the LAP provisions elicited invidious reactions from communities that felt short-changed.⁷⁰¹ In the spirit of equity, justice and fairness, and in an attempt to create a uniform framework for Customary Land Administration in the affected regions in Ghana, clan and family lands have been included in the provisions that deal with stool and skin lands. This is because they are all lands held in trust for the various corporate tenure arrangements, and heads of these corporate groups are fiduciaries accountable to the people as indicated in Article 36 (8) of the Constitution.
- ix. Use of Alternative Dispute Resolution (ADR) mechanism: In attempt to decongest the conventional courts, and resolve land related disputes in an easy,

⁷⁰⁰ Rebecca Sittie, 'Land Title Registration –The Ghanaian Experience'. P. 5

⁷⁰¹ Amewu, p. J. 'Land Bill 2017. Ministry of Land and Natural Resources'. P. 3- 4.

prompt and affordable manner, and increase harmonious co-existence within the households and communities, the reform prescribed that all land related disputes must be first be subjected to the ADR mechanism in accordance to the provisions of the Alternative Dispute Resolution Act, 2010.⁷⁰²

Available reports based on the established key performance indicators (KPI) have revealed commendable positive outcomes following the recent land reform in Ghana.⁷⁰³ For instance, it has been revealed that the newly created CLS are making tremendous impacts in local land administrations through record keeping, creation of awareness, customary rights recordation, protection and dispute resolutions.⁷⁰⁴ Available statistics has also shown a sharp reduction in the length of time taken for deed registration from 36 months to less than 1 month; title registration time reduced from 36 months to less than 6 months; 130% increase in revenues generated for the development of local communities; both land title and deeds registered by women increased by 50% each: 35,000 backlog of land cases has been cleared with the help of ADR mechanism; one consolidated land law now exists as against the divergent 166 laws and regulation that were previously in place.⁷⁰⁵

However, further researches and impact assessment analysis will continually be required to determine the degree of consistency, overall impacts and sustainability of the achievements of the reform project, especially after the end of missions and withdrawal of supports from International Development Partners that have been working assiduously towards the actualisation of the goals of the project. It is the position of this paper that if these elements of Ghanaian reform package could be adopted and modified to reflect Nigeria's peculiar social realities, they will go a long way in solving most of the challenges bedevilling Nigerian land sector, particularly, problems associated with tenure insecurity and land rights of women and other vulnerable members of the Nigerian society.

8.7: Conclusion

In view of the above analysis, this paper argues that for any land tenure system and land management proposal for Nigerian state to reflect the definitive elements of "fit-for-

⁷⁰² Ibid. p. 70

⁷⁰³ W. Odame Larbi; Ghana's Land Administration Project: Accomplishments, Impacts and the Way Ahead. World Bank Conference on Land and Poverty Reduction. The World Bank, Washington D.C. 18 – 20 APRIL 2011. P. 7, 12 and 13

⁷⁰⁴ Ibid.

⁷⁰⁵ Ibid.

purpose” ideology and Responsible Land Management concept, as well as entrench respect for the tenurial rights of women and other vulnerable members of the Nigerian society, such a construct must be anchored on decentralised and bottom-up participatory land administration principles. To this effect, land administration responsibilities in Nigeria must be devolved to the ethno-tribal blocs that constitute the present Nigerian state. Just like her Ghanaian counterpart, Nigerian state needs to embark on an ambitious land reform exercise that would put into consideration the constituent indicators of the Responsible Land Management framework, and the definitive elements and nuances of the Nigerian society as a heterogenous entity using fit-for-purpose concept and other related land tool indicators. Successful implementation of this would require both legal reformation and customary law recognition, social re-stratification, structural or institutional re-modification and strengthening where necessary.

CHAPTER 9: PROPOSALS FOR REFORM OF NIGERIAN LAND ADMINISTRATION.

9.1: Introduction.

The social dynamics that condition tenure relations in many rural communities, and the land rights mostly available to many low-income earners, rural dwellers, as well as the vulnerable members of the society like women and children are consistently not recognised in numerous conventional land administration systems. This remains so despite the fact that these traditional models and social tenurial arrangements play important roles and provide various degrees of security to the practitioners who are obviously in the majority. The conventional land administration models operational in most of the developing countries, particularly in Africa, have been proved to be grossly inadequate to go to scale, as it ignores various forms of social tenure relations that are indispensable to the survival and sustainability of the rural livelihoods and developments. This arises from their failure to adopt flexible and sensitive legal cum regulatory frameworks capable of accommodating the divergent tenure arrangements indigenous to various African communities. Thus, Lemmen Christiaan et al noted that “While many tenure rights are defined in formal laws, there are often other rights that are not similarly defined, but yet people use them every day because they are recognised by the local community and others. These rights enjoy social legitimacy even in the face of non-recognition or even legal proscriptions by the states. Sadly, governments’ perception of secure land tenure in most of the developing countries, Nigeria inclusive, always preclude customary land tenure systems and their peculiar functionalities as land questions are often viewed from the narrow prism of conventional narratives that is rooted in economic productivity and profitability.⁷⁰⁶ Such a simplistic and insensitive approach to the tenure insecurity question in the developing world reflects the dichotomy between most governmental policies and social realities. Thus, the failure to recognise the important roles played by community life and household relationships, as well as the traditional values, uses and interests attached to land in developing countries. Attempts have been made in chapter two of this thesis to explore from African customary or traditional perspective both the understanding and meaning of land, as well as the divergent values it holds and accords to its holders and users alike. It is worthy to note that “Issues concerning heritage, identity, prestige, and land sharing

⁷⁰⁶ This, for example, informed De Soto’s economic boom pornification for Africa which was hinged on land registration and commercialisation ideology.

(among others), for example, have a tenure aspect that can give communities a sense of livelihood, belonging, equality and empowerment”.⁷⁰⁷ Efforts aimed at building a western-style land administration solutions to the challenges of tenure insecurity in the developing countries has failed to achieve the expected goals. This is particularly because of the challenges of weak institutions, poor legal and regulatory frameworks, societal complexities, lack of capacity, poor maintenance culture, cost and long implementation timeframe, as well as difference in local contexts and preferences.⁷⁰⁸ Unfortunately, the chances of the prevailing paradigm scaling up to engage those excluded by the conventional statutory and administrative system, particularly the poor and most vulnerable members of the society, are very slim.⁷⁰⁹

This chapter therefore aims to provide a worthy alternative to the status quo in relation to the land administration and tenure insecurity challenges identified above. It hopes to develop a novel, more realistic, hybrid, decentralised, zone-specific, flexible, cost effective, scalable and fit-for-purpose land administration system reflective of local nuances and the socio-cultural peculiarities of the Nigerian state. This will be done using the guides from the Fit-For-Purpose (FFP) land administration concept and other coordinating land tool indicators. Successful implementation of this would require both legal reformation and customary law recognition, social re-stratification, structural or institutional re-modification and strengthening where necessary. It is upon the successful development of this new land model that this thesis hopes to make its major original contribution to knowledge.

9.2: Understanding the Fit-for-purpose Land Administration concept

Following the obvious limitations and the failure of the conventional, western-style land administration and management system to achieve the stated goal of delivering sustainable secure tenure for all at affordable rates, with the capability of fast and scalable improvements over time, and the intention of achieving significant reduction in global poverty level, ensuring social inclusivity, increased investments and sustainable economic development using good natural resource management and environmental friendly approaches, the world was faced with the need for the development of new effective and purposeful land administration and management framework to fill the

⁷⁰⁷ Chigbu, Uchendu et al, *Tenure Responsive Land Use Planning*. p. 6

⁷⁰⁸ Enemark, S., McLaren, R., & Lemmen, C. *Fit-For-Purpose Land Administration: Guiding Principles for Country Implementation*. P. 2

⁷⁰⁹ Enemark Stig et al, *Fit-For-Purpose Land Administration*. P. 9

obvious lacuna. In response to this need and in recognition of the urgent need for a paradigm shift in the approaches to global land administration and tenure insecurity challenges, various stakeholders in global land governance embarked on the search for a workable and sustainable alternative. Thus, the UN Committee on Economic, Social and Cultural Rights, through the General Comment 4 of 1991, directed its member states to ensure that;

Notwithstanding tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.⁷¹⁰

The ‘Voluntary Guidelines on the Responsible Governance of Tenures of Land, Fisheries and Forests in the Context of Food Security’ (VGGTs) equally admonished member states to make provisions for the legal recognition of legitimate tenure rights that are currently outside the purview and protection of their National Laws. It reiterated the non-absolute nature of all land rights and call on member states to ensure that all forms of tenure accord the people some degree of tenure security against forced evictions, harassments and other threats that run contrary to the existing States’ national and international obligations.⁷¹¹

More so, the Global 2030 Agenda for Sustainable Development recognised and acknowledged the centrality of land to the fight against poverty and inequality, as land is rightly seen not only as a source of food and shelter, but also as the basis for social, cultural, economic and religious practices, as well as an indispensable tool for growth and development. It is therefore not surprising, however, that about one third of the 17 goals of the Sustainable Development Goal (SDG), together with its 169 targets and their accompanying indicators border on land related issues such as poverty reduction, tenure security, sustainable agricultural productivity, gender equity, cities and human settlements, sustainable ecosystem and inclusive societies for sustainable

⁷¹⁰ General Comment 4, UN Committee on Economic, Social and Cultural Rights, 1991

⁷¹¹ UN-FAO, ‘Voluntary Guidelines on the Responsible Governance of tenure of Land, Fisheries and Forests in the context of food security. (2012) Section. 4.3 and 4.4 (p. 6). <<http://www.fao.org/docrep/016/i2801e/i2801e.pdf>>. Accessed 10/07/2018

development.⁷¹² Indicator 1.4.2 of the Sustainable Development Goal (SDG) 1 particularly targets to ensure that every man and woman, most especially the poor and vulnerable members of the society, enjoy equal rights and access to basic resources and services, equal right to the ownership, control and inheritance of land, property and other resources, as well as appropriate new technologies and financial services come 2030 by measuring the “proportion of total adult population with secure tenure rights to land, with legally recognised documentation, and who perceive their rights to land as secure, by sex and by type of tenure”.⁷¹³ Indicator 5a of the SDG also instructed state parties to undertake reforms aimed at ensuring that women enjoy equal rights to economic resources, land and other forms of property, financial services, inheritance and other natural resources in line with national statutory provisions.⁷¹⁴

That estimated 70% of the global population currently live outside the formal land administration system with its resultant tenure insecurity reveals the ineffectiveness of the status quo.⁷¹⁵ The universal acknowledgement of the inadequacies of the conventional western-style land administration system to tackle tenure insecurity challenges particularly in the developing countries, and the global call for the development of new, flexible, proactive, affordable and scalable land administration approaches that are adaptable to local needs and circumstances, rooted in the recognition of pre-existing and acceptable institutions as well as legitimate socio-cultural practices has led to the emergence of innovative approaches and land tools. One such innovative land tool that most appropriately aligns with the goals of this research is the “Fit-For-Purpose” (FFP) land administration concept. The basic idea behind FFP land administration concept is that preferred approaches for the development of land administration systems and land rights recognition in developing countries should be flexible and focused on service delivery for the benefit of the concerned instead of the wholesome supplanting and unyielding proclivity to the sophisticated, western-style approaches.⁷¹⁶ Interestingly, the FFP land administration tool did not arrogate to itself the ingenuity of a quintessential sole panacea for the eradication of all land and tenure challenges, rather it emerges as a flexible and proactive land administrative tool that

⁷¹² Enemark, S., McLaren, R., & Lemmen, C. Fit-For-Purpose Land Administration: Guiding Principles for Country Implementation. P. 14

⁷¹³ GLTN/UN-HABITAT; Measuring Land Tenure Security with SDG Indicator 1.4.2.

⁷¹⁴ World Bank publication; ‘Atlas of Sustainable Development Goals 2017’. p.109.

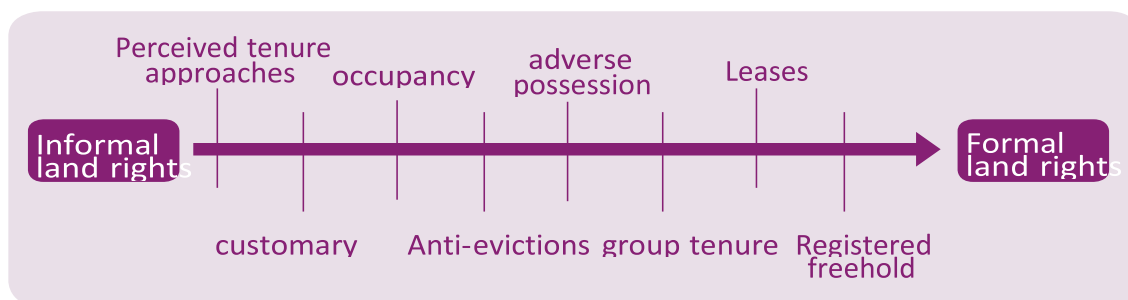
⁷¹⁵ Enemark, S., McLaren, R., & Lemmen, C. Fit-For-Purpose Land Administration. P. 13

⁷¹⁶ Enemark Stig et al, Fit-For-Purpose Land Administration. P. 10.

anchors its successful implementation on the recognition of the principles of “Continuum of Land Rights” (see Fig. v below), and other interrelated land tools designed by the UN-HABITAT/Global Land Tool Network (GLTN) which include the Co-management system; post-disaster and post-conflict land administration system; Participatory Enumeration; Scaling up Grassroot Approach; Gender Evaluation; and the pro-poor land recordation system known as “Social Tenure Domain Model” (STDM). These innovative tools are either implemented together or in parallel.⁷¹⁷

FFP land tool has been recognised by the International Federation of Surveyors (FIG) and the World Bank, with the GLTN elaborating the approaches in collaboration with the Dutch Kadaster and other key partners. UN-HABITAT however assumes the position of the custodian of this innovative land tool.⁷¹⁸

Fig. v: CONTINUUM OF LAND RIGHTS CONCEPT.



Source: (Lemmen, Christiaan et al., 2016).

“Continuum of Land Rights” concept allows for the recognition of a range of possible land tenure systems on a continuum with each form of tenure system providing different sets of rights, security and responsibilities, with different levels of enforcements and limitations. Each tenure right in the continuum ladder would provide stronger protection than the former, with the registered freehold tenure system at the peak of the continuum offering the strongest form of protection. The scalable nature of the Continuum of Rights concept does not necessarily imply that every society must develop into freehold tenure arrangement, rather each of the tenure system on the continuum platform should be legally recognised to provide at least basic protections for the land users, their limitations notwithstanding.

The ability of the conventional land administration system to provide secure tenure rights is never in doubt. However, customary tenure system appears more equipped and

⁷¹⁷ Jaap Zevenbergen et al, ‘Designing a Land Records system for the poor’. P. 3-4

⁷¹⁸ Ibid. P. 3

capable of meeting the socio-economic needs of local land users, particularly the poor, vulnerable and communal land users, in a secure manner even in its undocumented form. Though, its effectiveness has waned over time owing to the enormous demand on communal lands due to increased investment in natural resources, rampant land grab cases and governmental expropriations without commensurate compensations.⁷¹⁹ Scaling up conventional tenurial policies and statutory recognition of these customary land rights would provide the much needed guarantees and protection to the rural communities and reduce risks associated with these increasing demands and investments in rural lands.

Similarly, STDM allows for the modelling and management of complex social tenure relationships between given people and all socially-legitimate tenurial rights peculiar to them with less emphasis on formalities, legality and technical accuracy. It allows for the recognition, recordation and strengthening of all informal tenurial rights, as well as formal rights (based on management of information) in an STDM compliant land administration system. Recordation is diversified as against one centralised land register or database, thus enabling tenure security for all particularly at the grassroots. Outcomes will be scalable, if necessary, in response to evolving opportunities and needs.⁷²⁰ STDM also goes in conjunction with other land tools like “Co-management System” which provides for a co-operative engagement between the communities and the government in the generation and keeping of land records, as well as in eliminating all forms of injustices in relation to the land rights of the poor and other vulnerable members of the society.⁷²¹

Successful implementation of the FFP concept is also linked to the adoption of flexible, functional and upgradable Information Communication Technology (ICT) infrastructure to facilitate greater functionality by providing transparent and affordable land information with ease for all. Though the ICT will over time evolve and ultimately embrace high level of sophistication for the accommodation of new technologies and other ICT evolutionary features like e-signature, e-conveyancing and cloud-based services. However, the initial phase of the ICT solution will be simple in consideration to infrastructural limitations and poor availability of ICT skills as is the case in many

⁷¹⁹ Enemark Stig et al, Fit-For-Purpose Land Administration. P. 23

⁷²⁰ Lemmen, Christiaan et al. Guiding principles for building fit-for-purpose land administration systems in less developed countries. P. 4

⁷²¹ Jaap Zevenbergen et al, ‘Designing a Land Records system for the poor’. P. 4

developing countries. This will be incrementally enhanced and scaled up over time in response to emerging opportunities, needs and available resources.⁷²²

FFP approach to land administration system generally entails the application of spatial, legal, and institutional methodologies that are most suitable for the provision of tenure security for all. It provides for the building of an affordable, flexible and scalable country-specific land administration systems capable of meeting today's land related challenges in a record time, as against the strict adherence to the advanced technical measures currently in use. It is a participatory, flexible, inclusive and scalable approach to land administration that offers immediate, cheap and incremental remedy to the tenure insecurity constraints facing most of the developing countries of the world. According to Lemmen and Beentjes,⁷²³ the important elements of FFP land administration concept are flexibility, inclusivity, participatory, affordability, reliability, attainability and upgradeability. This means that each country specific FFP land administration model must be “flexible in the spatial data capture approaches to provide for varying use and occupation. – Inclusive in scope to cover all tenure and all land. – Participatory in approach to data capture and use to ensure community support. – Affordable for the government to establish and operate, and for society to use. – Reliable in terms of information that is authoritative and up-to-date. – Attainable in relation to establishing the system within a short timeframe and within available resources. – Upgradeable with regard to incremental upgrading and improvement over time in response to social and legal needs and emerging economic opportunities”.⁷²⁴

Above fundamental factors must be given full considerations and priority in the design and implementation of any given Fit-For-Purpose land administration framework. However, participation, flexibility and incremental upgrading and improvements must be accorded clear and special attention. Participation particularly entails the involvement of the target beneficiaries, stakeholders, communities or their representatives in the planning, adoption and execution of policy measures relating to land use and its administration. It avails the concerned people, communities or groups

⁷²² Lemmen, Christiaan et al., ‘Guiding principles for building fit-for-purpose land administration systems in less developed countries’. P. 4

⁷²³ Vos, J., Lemmen, C. H. J., & Beentjes, B. ‘Blockchain-based Land Administration: Feasible, Illusory or Panacea? In Responsible Land Governance: Towards an Evidence Based Approach’, (2017) Washington, D.C. March 20-24, 2017: Proceedings of the Annual World Bank Conference on Land and Poverty Washington, D.C.: The World Bank. P. 6

⁷²⁴ Ibid.

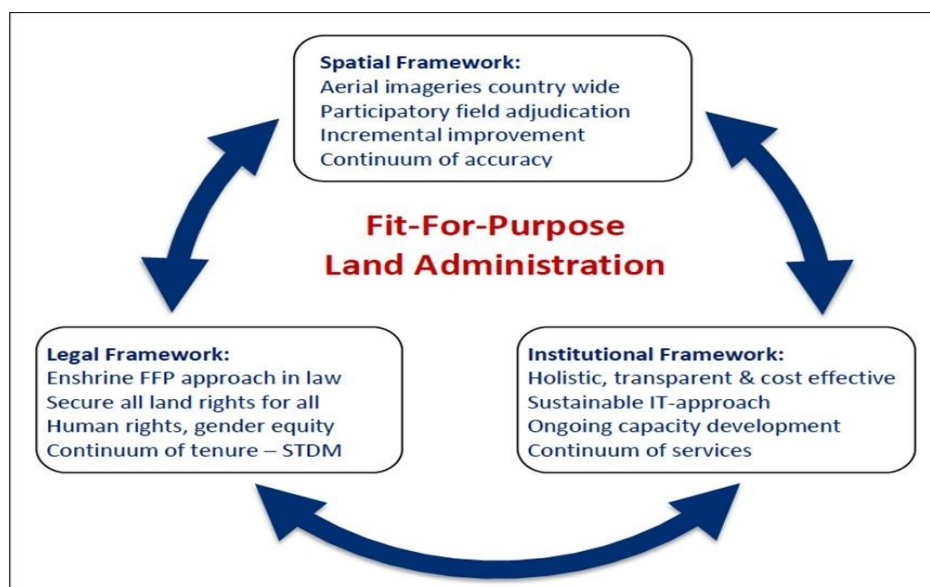
the opportunity to express their concerns, needs and expectations, and it can manifest in the form of active or passive involvement, as well as through mobilization or consultative engagements. Though, it must be noted that some mild forms of participation like simple information or consultation meetings hardly offer the desired goals and sense of deep engagement to the people or communities due to lack of dialogue. True participation entails clear communication and stakeholders' involvement in land administration; a collaborative and interactive multi-stakeholders' decision-making process that includes both the vulnerable and disadvantaged groups; which offers all participants the opportunity to formulate their interests and objectives in a dialogue, leading to harmonious outcomes. This form of participation breeds transparency and reduces chances of corruption, promotes accountability, bridges the gap between the government, private sector, civil societies and the public, provides opportunity for better understanding and appreciation of local peculiarities and nuances, builds trusts and strengthens the commitments of stakeholders towards set objectives and improved governance.⁷²⁵ Flexibility, on the other hand, entails the adoption of liberal approaches in the demand for spatial accuracy and the design of the legal and institutional frameworks, tenure recordation and recognition of diversity of tenure rights which ranges from informal possession and use rights like communal tenures, Kola tenancy, customary tenancy, land pledges, customary lease etc to formal ownership rights like leasehold and private ownership. This will ensure that no person, group of persons or tenure type is left behind. Incremental upgrading and improvements involve the design and adoption of frameworks and policies in such ways that they meet the present needs of the society in relation to time, cost, available manpower, skills and accuracy thereby creating "minimum viable product". These basic standards would be subsequently improved upon and upgraded incrementally in line with emerging socio-cultural, economic and legal realities.

As noted earlier, the concept of FFP land administration is compartmentalised into three interrelated frameworks namely; the spatial, the legal and the institutional frameworks. Spatial framework deals with the recordation of various prevailing forms of land use and occupation. The level and accuracy of the recordation should however be sufficient to secure different kinds of legal rights and meet the standard of the forms of tenures recognisable by the legal framework. While the institutional framework manages these

⁷²⁵ Chigbu, Uchendu et al, *Tenure Responsive Land Use Planning*. P. 10

recognised rights, lands and other natural resources usage with the aim of achieving an inclusive and accessible service delivery.⁷²⁶ (see fig. vi below)

Fig. vi: COMPONENTS OF FFP CONCEPT



Source: (Enemark, S., McLaren, R., & Lemmen, C., 2016).

Spatial framework looks at the format for the occupation and use of both land and other natural resources, and the procedure for the management of these rights through the institutional framework. Its scope and level of accuracy is also expected to meet the threshold that would ensure the security of these legal and tenurial rights. FFP is to be rooted in legal framework, while the design of the institutional framework must be transparent, straightforward and coordinated to provide this regulatory function. This also requires current and reliable land information that is to be provided through the spatial framework.⁷²⁷

Each of the three FFP frameworks also has four main definitive principles as could be seen from table 2 below. Each of these fundamental principles is flexible and scalable in response to the societal needs, peculiarities and available resources.

The FFP concept does not by any means intend to undermine the potentials and functionalities of the conventional land policy and administration system with its strong tenurial security framework, rather, its purpose is to complement conventional land rights system by widening the dragnet of tenurial rights reviews, recognition and

⁷²⁶ Enemark, S., McLaren, R., & Lemmen, C. Fit-For-Purpose Land Administration: Guiding Principles for Country Implementation. P. viii

⁷²⁷ Ibid. P. 6

recordation on a scalable continuum platform in which the conventional land administration system would well be the end goal as against the entry point. This appears more plausible considering the number of people, particularly women and vulnerable members of the society that mostly depend on customary land arrangements, whose tenure rights are neither recognised nor protected by the conventional tenure security arrangements, the enormous resources and capacities required for building such conventional systems, their sustainability and the connected basic spatial framework which many developing countries can ill afford.

Table 2: THE KEY PRINCIPLES OF THE FFP APPROACH

Spatial Framework	Legal Framework	Institutional Framework
<ul style="list-style-type: none"> • Visible (physical) boundaries rather than fixed boundaries. • Aerial/satellite imagery rather than field surveys. • Accuracy relates to the purpose rather than technical standards. • Demands for updating and opportunities for upgrading and ongoing improvement. 	<ul style="list-style-type: none"> • A flexible framework designed along administrative rather than judicial lines. • A continuum of tenure rather than just individual ownership. • Flexible recordation rather than only one register. • Ensuring gender equity for land and property rights. 	<ul style="list-style-type: none"> • Good land governance rather than bureaucratic barriers. • Integrated institutional framework rather than sectorial silos. • Flexible ICT approach rather than high-end technology solutions. • Transparent land information with easy and affordable access for all.

Source: (Enemark, S., McLaren, R., & Lemmen, C, 2016).

9.3: WHY FFP APPROACH AND THE RELATED LAND TOOLS?

Analysis so far on the prevailing Nigerian land administration system and its praxis revealed a bulwark of hydra-headed challenges bedevilling the sector. Unfortunately, the share size of Nigerian State and the heterogenous nature of her constituent landscape has made it practically impossible for the adoption and successful implementation of workable uniform and centralised system of addressing these challenges, particularly the harsh realities of tenure insecurity and land contestations currently faced by many

women and other vulnerable groups in Nigeria. The proclivity to conventional methods of land administration as substitute to the perceived discriminatory customary tenurial provisions literally exacerbated the situation it was meant to eradicate and have even created new problems.

The adoption of the Land Use Act particularly and other policy measures introduced by different administrations in Nigeria in attempt to tackle these constraints has failed to achieve expected goals, and in many fronts, exacerbated the very problems it was meant to eradicate. The obvious reasons for this development could be attributed to plethora of factors some of which include the large size of the country and differences in the socio-cultural, economic and religious backgrounds of Nigerian society, high cost of implementation, rigidity and insensitivity of preferred policy choices to social realities and peculiarities of different sections of the Nigerian state, endless and non-participatory nature of reform programmes, corruption and neglect for the functionalities of pre-existing customary institutions. The results are that the land rights of many Nigerians remain insecure and outside the government's protection and tax scheme, clashes between different groups over competing claims to land use and access, avoidable tenurial clashes and litigations with its resultant loss of resources, time and cordial relationships, and most regrettably, unimaginable high level of poverty as approximately 87.4 million Nigerians are reported to be living in extreme poverty, making Nigeria the world's number one country with highest number of people living in extreme poverty.⁷²⁸ These unfortunate realities has created urgent and unavoidable need for the adoption of more effective approaches capable of remedying the ugly situation.

The choice of FFP approach to land administration as preferred land tool for tackling Nigerian land challenges is informed by its ability to provide effective modalities for the development and adoption of affordable, flexible, participatory, inclusive and scalable country-specific land administration system capable of offering immediate, cheap, timely and incremental remedies to tenure insecurity problems and other land related challenges commonly faced by most developing countries, Nigeria inclusive. This will allow for eventual statutory recognition of customary tenure system and the functionalities of the pre-existing customary institutions. These definitive elements of FFP concept distinguishes it from other land tools, making it a suitable tool for tackling

⁷²⁸ World Poverty Clock, August 2018. Reports on Nigeria.

Nigerian tenure challenges; a feat many other land tools and the prevailing land administration system in Nigeria are inadequately equipped to achieve.

The FFP concept works in conjunction with other related and complimentary land tools like “the Continuum of Rights” concept and STDM. These land tools also hold potentials useful for solving Nigeria’s peculiar tenure challenges. The Continuum of Rights concept allows for detailed inventory of all land rights and social tenurial arrangements, formal and informal, as well as provides a platform for statutory recognition of these tenurial interests at various stages, with each stage offering varied degrees of security to its claimants. This gives room for tenurial hybridity which in turn presents hope and great benefits to women and other vulnerable groups in Nigeria majority of whose negotiated secondary interests in land are insecure and not registrable. This is equally useful for the regulation of land valuation, land use planning and taxation. Levies for registration and recordation of these varied tenures, and property taxes will equally constitute good source of revenue generation for the country.

FFP approach appears more feasible for poor and developing countries like Nigeria as it offers low cost solution to perhaps monumental tenure challenges. It will be of a huge cost and nearly impossible to provide effective capacity, as well as meet the legal and institutional requirements needed to carry out a standard field survey across the 36 States and 774 Local Government Areas of Nigeria in relation to the various ethno-tribal, religious and linguistic considerations within a reasonable time. Its use of area imagery (spatial methodology) for generation of data and use of free open access software like STDM for processing, analysing, storing and retrieving generated data when needed puts FFP approach far ahead other tool, while the provision for the use of locally trained personnel in the implementation of policies results in low cost with adequate accuracy. It also accords FFP approach a more legitimate leverage over other tools. All these attributes make FFP approach the most suitable land tool for tackling Nigeria’s peculiar land tenure challenges.

9.4: EMERGING DEVELOPMENTS THAT UNDERScore THE URGENT NEED FOR LAND REFORM IN NIGERIA

The problems bedevilling the Nigerian land tenure arrangements and land administration system are legion as could be inferred from the analysis so far. Right from the beginning of this thesis, it has been a massive revelation of litany of problems and challenges relating to tenure arrangements, land administration and its management in Nigeria. These land related problems include tenure insecurity, discriminatory

customary land practices, lack of access to land and other natural resources, unjust expropriations and land grab, top-down and non-inclusive land policy regime, as well as non-responsible and responsive land administration system.⁷²⁹ All these impact negatively on the progress and development of Nigerian state owing to the centrality of land rights and tenure security to the development of every nation, the achievement of sustainable economic development and alleviation of rural poverty.⁷³⁰

In addition to the above challenges, recent clashes between herdsmen and farmers over grazing rights, ownership and access to land, water and other natural resources has exacerbated the problems and contestation over land rights in Nigeria. Harsh weather patterns leading to acute water scarcity, drought, desertification, dry grasses and leaching, together with the increasing effects of tsetse-fly infestations have driven the nomadic pastoral herders from their traditional Northern localities to the areas occupied by farming communities within the Southern axis in search of water and grazing pastures for their livestock. Their cattle trample on and eat up crops and grasses, contaminate sources of water and destroy farmers sources of livelihood along the way. This results in confrontations and bloody clashes between the gun wielding herdsmen and defenceless farmers, leading to wanton destruction of lives and properties.⁷³¹ These clashes have significant negative impacts on Nigeria's food security as farmers are afraid of going to their farms for fear of losing their lives to the marauding herdsmen, various farming communities has been decimated, it has also claimed more than 2000 lives and displaced over 40,000 Nigerians. Unfortunately, in each of these incessant clashes, women, children and the feeble are always the main casualties.⁷³² Nigerian Government has been roundly condemned for being complacent and slow in responding to these clashes.⁷³³ Available options before the affected regions, States and Local Governments in this regard are limited owing to the land nationalization policy of the central government. Thus, it is not surprising that Nigerian GDP from agriculture

⁷²⁹ These problems have been exhaustively examined in chapters two, three, four and five of this paper

⁷³⁰ Annika Rudman, 'Genderized land reform and social justice; A gender perspective on the formalization of communal land tenure', in Ben Chigara (eds), *Re-conceiving property rights in the New Millennium: Towards a New Sustainable Land Relations Policy* (Taylor & Francis Ltd, 2012). P. 8

⁷³¹ Morgen, S. B, 'The Pastoral Conflict Takes a deadlier turn'. P. 8

⁷³² Mira Obersteiner: Fulani Herdsmen Crisis: Corruption and Ignorance Affecting Nigeria's Society.

⁷³³ Ibid.

recorded significant decrease by -13.40% between first quarter of 2017 and first quarter of 2018.⁷³⁴

Series of reform efforts aimed at salvaging these unfortunate situations has failed to make any meaningful impact for the obvious reasons of the incompatibility of policy choices with the constituent and definitive elements of Nigerian state, lack of political will to carry out the much needed reforms to a logical conclusion as could be seen from the activities of the defunct PTCLR,⁷³⁵ non-participatory and top-down nature of these intervention schemes, lack of sincerity of purpose on the side of major political actors, misplaced priorities and cosmetic treatment of symptoms as against the root causes of the problems, as well as lack of consultations and engagements with stakeholders during the processes of policy formulation, adoption and implementation of reform packages as was exemplified by Gen. Obasanjo regime's adoption and imposition of the Land Use Act of 1978 on Nigerians,⁷³⁶ corruption,⁷³⁷ political instability and its resultant policy summersaults, and other prebendal considerations. In addition, the adoption of the "8R Matrix Indicators for Responsible Land Management", in the evaluation of the responsiveness or otherwise of the Nigerian and Ghanaian land reforms from a comparative perspective further exposed worrying lacunas and inadequacies in the processes, policies and the practices of the prevailing Nigerian land administration system.⁷³⁸

More so, less than 3 percent of Nigerian land is formerly registered presently, and its tenures secure based on the prevailing conventional tenure security parameters,⁷³⁹ while the existence of vibrant and problem ridden informal land market has been blamed on the failure and poor implementation of the Land Use Act. Over 70 percent of land transactions in Nigeria today are conducted outside the formal market arrangement.⁷⁴⁰ This rampant informality in land transactions has brought fresh loads of problems which

⁷³⁴ Trading Economics, 'Nigerian GDP from Agriculture 2010- 2018'. <<https://tradingeconomics.com/nigeria/gdp-from-agriculture>>. Accessed 12/08/2018

⁷³⁵ See the later part of Chapter 6 of this work

⁷³⁶ *ibid*

⁷³⁷ Premium Times, 'ICPC uncovers massive fraud in Abuja's land administration system'. August 12, 2018. <<https://www.premiumtimesng.com/news/5119-icpc-uncovers-massive-fraud-in-abuja-s-land-system.html>>. Accessed 12/08/2018

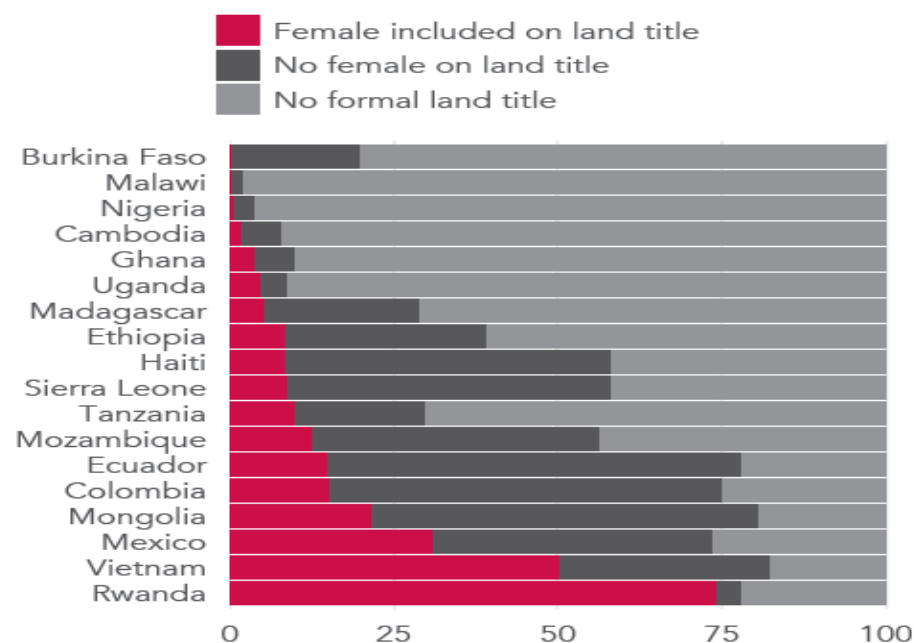
⁷³⁸ See Chapter 8 of this paper for the 8R Matrix analysis

⁷³⁹ Hosaena Ghebru and Fikirte Girmachew, 'Scrutinizing status quo: Rural transformation and land tenure security in Nigeria'. P. 5

⁷⁴⁰ Butler, Stephen, 'Nigerian Land Market and the Land Use Law', (2012) Focus on Land in Africa. <<http://www.focusonland.com/countries/nigerian-land-markets-and-the-land-use-law/>>. Accessed 09/09/2018

include unreliable land titles and fraudulent land transactions. The proliferation of the informal land market in Nigeria has also enthroned poor documentation and planning of land subdivisions.⁷⁴¹ These unfortunate realities underscore the failure of the Land Use Act and institutions responsible for its implementation. It also clearly indicates that conventional land administration approach alone cannot guarantee secure and equitable tenure for all Nigerians.⁷⁴² Worst still, the revelation that only a tiny fraction of Nigerian women's tenure rights is among the few registered and secure tenures, as could be seen from figure vii below, obliterates any claim of equitability as it only shows that the current land administration system in Nigeria is incapable of protecting the land rights and interests of women and other vulnerable members of the society. percentage of women whose interests in land are among the few registered tenures in Nigeria are grossly insignificant, placing Nigeria within the league of countries with the lowest rate of tenure security for women world over.

Fig. vii: Data from a study covering selected countries, and percentage of women with documented land title.



Source: (Carleto, Deininger, Hilhoust, and Zakout 2018).

The implication of this development is that clear majority of tenure rights of Nigerians are not recognised, are insecure, outside the government's tax scheme, and most

⁷⁴¹ Ibid.

⁷⁴² Hosaena Ghebru and Fikirte Girmachew, 'Scrutinizing status quo: Rural transformation and land tenure security in Nigeria'. P. 5

regrettably open to exploitation from land grabber and expropriation from the government and its agencies. Most of the victims in this category are the rural poor, women and other vulnerable members of the society who live with limited land access and resources to challenge the unfavourable status quo. However, these group of Nigerians, in many instances, do have informal and customary land interests that are often subject of overlapping claims.⁷⁴³ Unfortunately, these interests and overlapping tenurial claims are not recognised and protected by the conventional tenure registration system.

In recent time, the fortunes of the Nigerian state have deepened as various global indicators show that the state is at the precipice of becoming a failed state unless something is urgently done to re-vamp the economy, restore hope and save the country from collapse. Nigeria depend heavily on earnings from the sale of crude oil, and the recent dip in the oil price at the world market resulted in a sharp decline on the earnings and revenues of the State, the State's inability to meet its obligations and recession.⁷⁴⁴ In response to these unfortunate developments, the presidency pledged to wean the country off dependency on oil revenues by diversifying the economy. The government hoped to achieve this by revamping the agricultural sector. However, successful achievement of this commendable policy choice is highly dependent on the enthronement of equitable, responsible and fit-for-purpose land administration system, and the availability of security of tenure which would aid local productivity and boost investors' confidence. Lack of reformation of the land sector, the prevailing economic recession and the recent clashes between farmers herdsman obviously impacts negatively on the chances and prospects of achieving the diversification policy proposed by the Nigerian government. This has however exacerbated the challenges faced by women and other vulnerable groups in Nigeria.

Available statistics buttress this worrisome situation some of which include the fact that Nigeria is currently ranked first globally as the country with the highest number of people living in extreme poverty as stressed earlier,⁷⁴⁵ Nigeria is also the second worst country in the world in power supply (second only to Yemen and followed by Haiti and

⁷⁴³ For more information on the broad range of customary tenurial interests and secondary tenure claims available in Nigeria, see Chapter 3 of this paper

⁷⁴⁴ Premium Times Editorial: The Nigerian Economy and the Falling Oil Prices. November 28, 2014. <<https://www.premiumtimesng.com/investigationspecial-reports/172023-editorial-nigerian-economy-falling-oil-prices.html>>. Accessed 19/09/2018

⁷⁴⁵ World Poverty Clock, August 2018. Reports on Nigeria.

Lebanon).⁷⁴⁶ The country also maintains 3rd position in Global Terrorism Index ranking.⁷⁴⁷ Report from World Happiness Index reveals that Nigerians were happier in 2012 (82nd), 2014 (78th) than they are in 2016 (95th) and beyond.⁷⁴⁸ Between 2010 and 2017, Nigeria has moved from 137th position to 148th in global peace index ranking.⁷⁴⁹ Above situations are undeniably linked to poverty and underdevelopment. Any country that is truly desirous of positive transformation and sustainable development is expected to urgently re-examine its approaches in the face of overwhelming unencouraging global poor performance and perceptions as listed above. Thus, Nigerian State needs to re-examine her approaches to urgent national issues, particularly as it relates to poverty, peace and sustainable development, and one sure way of doing that would be to review her land administration and management architecture for effective use and increased productivity.

The need to be proactive and think outside the box following these unfortunate realities can never be over emphasized. It is erroneous to see the adoption of the conventional land administration standard as the only panacea to this impasse or sole litmus for measuring tenure security and responsiveness, to the extent that any other system that fails to square up to the conventional standard is labelled insecure, obnoxious and repugnant. Same goes for demands for return to the pre-colonial customary tenure regime considering the level of developments, advancements, the pluralistic and sophisticated nature of the modern society and the amount of demand and pressure on land caused by changes to socio-economic dynamics, all of which has obviously overburden and eroded the strength, capabilities and effectiveness of the customary tenure administration framework and institutions that have traditionally regulated rights to land in pre-colonial Nigerian communities. Thus, neither the conventional system nor the customary law provisions seem to be roundly equipped to tackle the plethora of challenges associated with tenure insecurity in today's Nigeria. As there is no substitute

⁷⁴⁶ The Spectator Index Ranking 2017.

<<https://twitter.com/spectatorindex/status/952757415199498240>>. Accessed 07/09/2018

⁷⁴⁷ Global Terrorism Index Ranking 2017. P. 10.

<<http://visionofhumanity.org/app/uploads/2017/11/Global-Terrorism-Index-2017.pdf>>. Accessed 04/09/2018

⁷⁴⁸ World Happiness Index 2018. <<https://countryeconomy.com/demography/world-happiness-index/nigeria>>. Accessed 09/09/2018

⁷⁴⁹ Global Peace Index ranking 2018.

<<https://countryeconomy.com/demography/global-peace-index/nigeria>>. Accessed 08/09/2018

for specificity in the development of antidotes in any policy arena, the only feasible way out of this impasse remains the development of a country-specific hybrid land administration model for Nigeria using the guidelines of the “Fit-for-purpose” and other related land tools as already examined.

Nigerian government and other stakeholders need to urgently develop and adopt new workable, just and inclusive approaches capable of meeting the needs and challenges of tenure insecurity currently faced by most land users in the country. Doing this would require the development and adoption of basic simple, flexible, affordable and sustainable procedures reflective of the social dynamics of the Nigerian state, and the practical realities on land ownership, its usage and the question of gendered secure and equitable tenurial rights in Nigeria. This urgent need informed this research. It is the position of this thesis that the first step towards finding a workable solution to this problem lies in the adoption of decentralised land administration system in Nigeria as against the current centralised land administration format enthroned by the Land Use Act of 1978 (The Act). This would obviously require the amendment of the extant laws and subsequent removal of the Land Act from the Nigerian constitution.

Decentralization of land administration responsibilities would enable each region of Nigeria to formulate land administration system that reflects their social realities and meets their peculiar needs. Such would eventually pave way for identification, review, re-modification where necessary, recordation, adoption and eventual statutory recognition of the customary land rights and other secondary tenure arrangements that are operational in Eastern part of Nigeria; a goal that formed the central theme of this research.⁷⁵⁰ It should be recalled that prior to the adoption of the Act, land ownership, management and administration in Nigeria was decentralised along the North and south dichotomy, with each of the regions adopting land administration policies and frameworks reflective of their socio-cultural, economic, religious, environmental and geographic peculiarities, in relation to available resources and associated challenges.⁷⁵¹

⁷⁵⁰ The topic of this research is “Tenurial Hybridity, Land Rights and Gender Justice; A Case for Statutory Recognition of Customary Land Rights within the Traditional Rural Communities in Eastern Nigeria”

⁷⁵¹ In pre-colonial Nigeria, feudal system of tenure was operational in the Northern part of the country, while the ownership and management of land within the Southern axis was vested in the hands of heads of families, communities, villages and kingships to hold in trust for the benefit of all the members of the groups. See Chapter 6 of this work under the “Pre-colonial, Colonial and Post-Independence Land Tenure Systems and Reforms in Nigeria”.

9.5: PROPOSED STRUCTURAL FRAMEWORK FOR THE DECENTRALISATION OF LAND ADMINISTRATION SYSTEM IN NIGERIA

It will be impossible to devolve land administrative responsibilities along every ethnic or tribal divides of the Nigerian State because of the number of the ethnic groups, their interrelatedness and the similarities of most of the ethno-tribal groups. Fortunately, the existence of six Geo-Political Zones propounded by former Vice President Dr. Alex Ekwueme as antidote to the fear of ethnic domination in Nigeria, which was adopted during the 1994 Constitutional Conference,⁷⁵² would save the pain and responsibility of formulating new homogenous or quasi-homogenous blocs for the proposed devolvement of land administration responsibilities. Though the existence of these Zones is yet to be enshrined in the Nigerian constitution, however, they are deeply entrenched in the socio-political and economic structure and permutations of Nigerian state. Thus, political and economic fortunes of the state are currently being determined and distributed through these zones. For instance, the position of the President and other top political offices are rotated among these zones, while many Federal Agencies and parastatals like the Independent National Electoral Commission, National Assembly Service Commission, Federal Character Commission, Federal Civil Service Commission, Fiscal Responsibility Commission, Nigerian Communication Commission, National Hajj Commission of Nigeria etc structure their operational frameworks to reflect these Zonal divisions as they have six Permanent Commissioners, each representing one of the Zones.⁷⁵³

Although known as “Geo-political Zones”, geographical considerations were not the basic factor that determined the constituents of each of the zones, rather similarities in the history, culture, traditions and backgrounds of the entities determine which states, tribes and ethnic groups that are paired together (though states and tribes/ethnic groups ordinarily need to share common boundaries to be grouped together). This explains why some Zones like North Central Zone could stretch from almost the Eastern Axis to the Northern Axis in attempt to bring under one Zone ethno-tribal entities with considerable similarities in their backgrounds. In like manner, South-South Zone literally circled the South-East Zone for the same reason stated above. (see figure viii below). South-East Zone which is populated by the Igbo ethnic group is one of the available six Zones. It is

⁷⁵² Abdallah, N. M et al, ‘Discordant tunes over 6 geo-political Zones’. Daily Trust, Mar 29, 2017. <<https://www.dailytrust.com.ng/news/general/discordant-tunes-over-6-geo-political-zones/191175.html>>. Accessed 17/08/2018

⁷⁵³ Ibid.

particularly the zone under investigation and also remains the Zone with land tenure system that is perceived as the most discriminatory, controversial and contested land tenure system in Nigeria.⁷⁵⁴

Fig. viii: Map showing the six geo-political zones of Nigeria and the states under them.



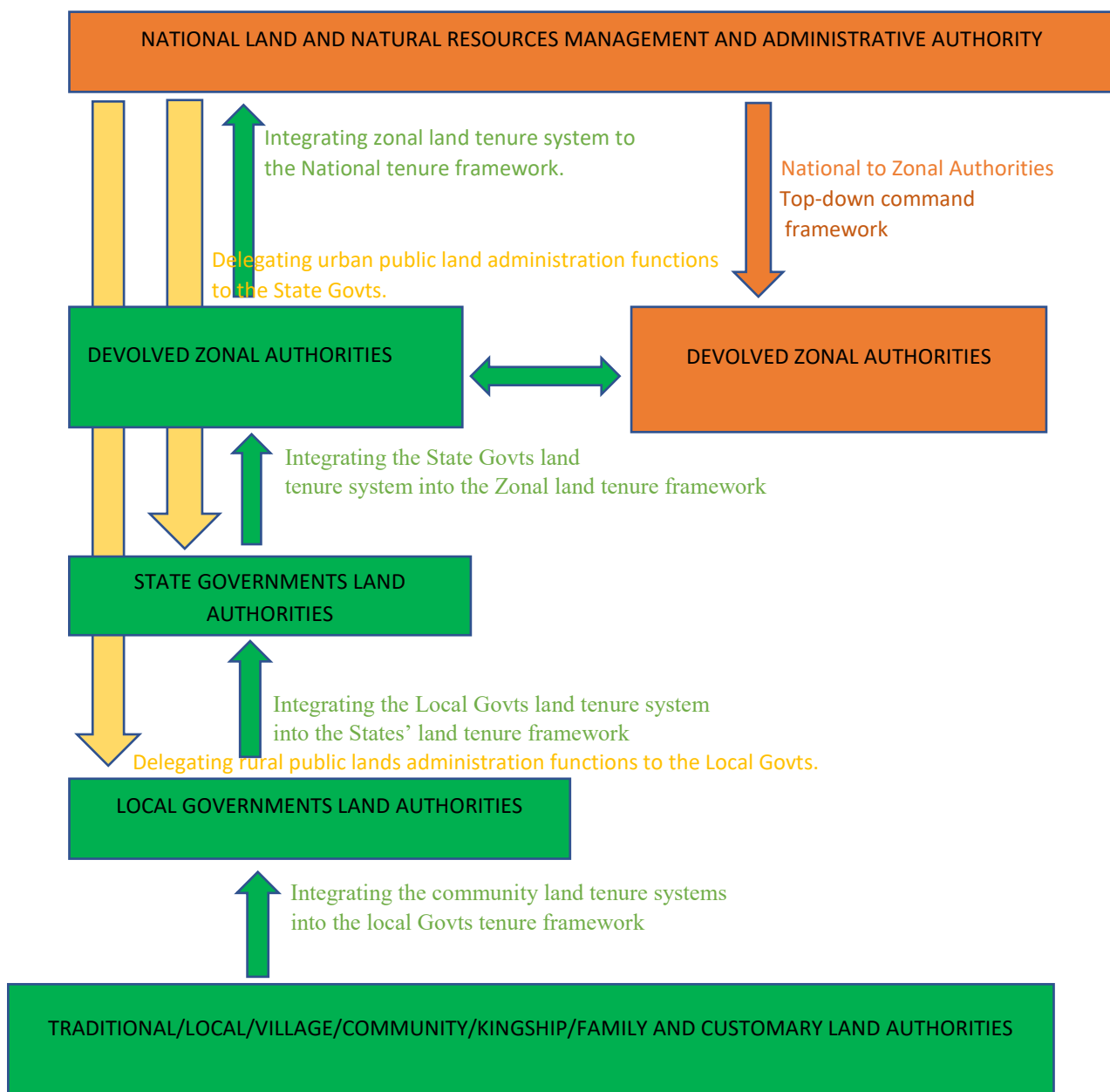
Source: (http://article.sapub.org/image/10.5923.j.ajgis.20170605.02_002.gif).

In like manner, figure ix below also shows the preliminary structural representation of the proposed decentralised land administration blocs for equitable and responsible land administration system in Nigeria. This, when properly reviewed by experts and other stakeholders in Nigerian land matters, and adopted would ensure the development of equitable, bottom-up, responsible, flexible and FFP land administration system in Nigeria. This would enable the proposed component zonal Land Authorities develop and adopt land management and administrative systems that would reflect their peculiar social ideologies, accord them the maximum benefits accruable from their land and satisfy their peculiar needs.

⁷⁵⁴ The land tenure system of the Igbos and the challenges of their land administration and management system has been exhaustively discussed in chapter two of this paper. Also, a brief history of the South eastern Zone was given as part of the “summary” in chapter 1.

In this proposed land administration framework, the National Government is to retain the responsibility of establishing the common or basic standard for land administration and management for the entire country. This would include the general principles of non-discrimination, guidelines for international and large-scale land acquisitions or transactions, as well as other areas of common interest to the federating units.

Fig. ix: PROPOSED STRUCTURAL FRAMEWORK FOR LAND ADMINISTRATION IN NIGERIA.



SOURCE: THE AUTHOR.

- Bottom-up integration framework.
- Top-down command framework.
- Delegation of functions

The responsibilities for the administration of public lands in urban areas will be delegated to the State Governments under an arrangement that will be agreed by the

stakeholders, while public lands in rural areas will be placed under the control of the Local Governments under similar arrangements. However, the responsibilities for the management and administration of natural resources in each of the six Zones that constitute the Nigerian State will be vested in the devolved Zonal Authorities under a new revenue sharing formula that will be agreed by the stakeholders.

In consideration of the important social functions performed by rural lands in general and communal lands in particular, most especially their usefulness to the livelihoods and survival of the rural populace, it is imperative that a systematic use and administrative guideline be established to ensure that it meets its goal of providing for the needs of the low and vulnerable members of the society. Thus, this paper proposes for the return of allodial titles back to the original land owners and the traditional institutions, and the creation of community level land administration body that will be based on the pre-existing customary institutions. Such development would illustrate not only the government's willingness to recognise the existence and functionalities of customary institutions, but the readiness to collaborate with the local institutions for the attainment of the societal developmental goals. Therefore, a customary land administrative body to be known as "Customary Land Authority (CLA) is to be established by each traditional institution to regulate and administer all tenure practices of communities under its jurisdiction with help and support from the States and Local Government Land Administration Authorities. Locals from the communities shall be recruited and be trained to constitute part of the reform policy implementation team within each of the CLA. The recruitment must be gender sensitive by making statutory provision for the full representation of women in the composition of the land administration personnel. This will cut cost, reduce discriminations and accord the exercise more legitimacy amongst the local populace, instil confidence, sense of satisfaction and make the local communities see themselves as integral partner to the reform programme.

Community Land Records (CLR) will also be established at each of the Customary Land Authorities (CLA). The CLR will contain up to date inventories of all land matters within each community or communities under each CLA; this will include all landholdings, reserves and attachments to land, rivers, streams, places of worship, as well as their status, i.e., whether they are occupied or fallow, if occupied, under what conditions; by whom, for what purpose and for how long. Every household in the community will be entitle to equal right of access to communal lands as is currently the

practice,⁷⁵⁵ while position of such grant is permanent and inheritable, the interests are possessory on permanent basis and cannot by effluxion of time or whatsoever circumstances be disposed of or converted to private land unless so permitted by the CLA. Other secondary use rights like grazing right, access to rivers and streams, fetching of woods for fuel and pastures for livestock feed, gathering of herbs, wild nuts, fruits, vegetables, and all other edibles, hunting rights, access to communal holy grounds for prayers or worship and etc will be open to every member of the community, and all strangers living within the communities and their guests irrespective of their age, sex and social standing.

Allocation of communal land to members of the community should be free, while subsequent demands for additional parcels, where available, should attract the fulfilment of certain stipulated prerequisites, say performance of some traditional rights, payment of stipulated land use charge or both.⁷⁵⁶ The value of this must be commensurate, fair and will be determined and enforced by the traditional institutions to avoid communal land hoarding, abuse and usurpation of the rights by the privileged members of the communities. There should also be a blanket ban on sublease of allocated communal lands, while any act of alteration on such land must be sanctioned by the traditional institution in accordance to the customary rules of engagement.

Arrangements will be made for the re-vesting of allodial titles back to the individual land owners, families, communities and every other land-owning groups or customary institutions as was the case before the nationalization policy of the Land Use Act of 1978. In Eastern Nigeria, as is also the case in most rural sub-Saharan African communities, heads of families, traditional rulers of communities, kingships and chiefs de-facto administer and manage land rights under their jurisdictions even in situations where they are either ignored, statutorily restricted or proscribed by law owing to lack of capacity, poor institutional and financial frameworks of governments. Thus, officially returning these responsibilities back to these customary authorities would amount to building and strengthening institutions seen as legitimate by the local populace, which are de facto performing land related functions at minimal cost.

⁷⁵⁵ Kunle Aina et al, Introduction/Historical Evolution of Land Law in Nigeria. P. 48-49

⁷⁵⁶ See chapter 9 of this paper for more on processes of land acquisition in traditional Igbo communities.

More so, expropriated lands that are either not in use/abandoned by the government or diverted for private uses other than the public purposes for which they were expropriated shall be returned to the original owners in situations where such lands are still undeveloped. In situations where the lands are already developed or in use but terms of acquisitions are yet to be met by the government, backlog of compensations on the expropriated land shall be cleared within a stipulated reasonable timeframe to maintain continued possession and access to the land by the government or the arm of government responsible for the expropriation, failure of which the expropriation becomes null and void, and fresh re-expropriation terms established in line with the newly stipulated terms and condition for land acquisition.

Final adoption of the above proposed structural framework will be contingent upon further consultations, reviews and contributions from all stakeholders in Nigerian land matters, including the representatives of the local groups, particularly women and other vulnerable members of the society, national and international Non-Governmental Organisations (NGOs) with vested interests in Nigerian land sector and poverty alleviation, donor partners and experts in land matters. The outcome of the review exercises will be factorised or integrated into the final proposed framework and be made available at the “National Constitutional Conference” (commonly known as “National Confab” in Nigeria) for final adoption. A bill to that effect will thereafter be sent to the parliament to be legislated upon. Finally, the President’s ascent will turn the passed bill into an Act to replace the current dysfunctional Land Use Act in Nigeria. This new “Land Act” will constitute the new “Legal Framework” that would regulate all the various stages of the Nigerian Land Reform Programme and will provide the platform necessary for the provision of people-oriented, sustainable, scalable, effective, responsive and FFP land administration system in Nigeria. The operationalisation of the new Land Act would pave way for each Zone in Nigeria to formulate and adopt new Zonal-specific land administration system that would reflect their peculiarities and meet their immediate and long-term peculiar needs in accordance with the established National baseline guide and available resources. This will therefore provide viable and practical grounds for the eventual development and adoption of a hybrid land administration system capable of enthroning secure and equitable tenurial rights to women, vulnerable groups and all other inhabitants of the “South-East Zone” of Nigeria.

9.6: TOWARDS SECURE AND RESPONSIVE LAND RIGHTS FOR ALL IN EASTERN NIGERIA

Beyond taking inventory and review of all prevailing land rights and tenure claims in Eastern Nigeria; both formal and informal land interests, the objective would be to strengthen the reviewed tenurial rights and claims by according them legal recognition on the scale of the Continuum of Rights framework. Considering that “people or households were considered to have secure tenure when there was evidence of documentation that can be used as proof of secure tenure status; or when there is either *de facto* or perceived protection against forced eviction”,⁷⁵⁷ these reviewed tenurial rights and interests can therefore be statutorily recognised and recorded/registered to provide the owners with varying degrees of protection and security. This can be done at the zonal and local levels. Unregistered areas within the Zone can be mapped and registered on the field using participatory approach. The outcome will thereafter be entered into the Zonal Land Register, and thereafter be forwarded to the National Ministry of Land and Natural Resources for onward recognition and registration. At the local or community levels, reviewed legal and social legitimate land rights will be identified, reviewed and also recorded in the CLRs using participatory approaches and be transmitted to the National Ministry of Land and Natural Resources through the Local, State and Zonal land authorities.

One major aim of the FFP approach remains the implementation of National Land Programmes at scale for the achievement of tenure security for all. Local pro-poor recordation of tenurial rights can, in this instance, complement the Zonal and National efforts or serve as pilot projects to Zonal and National schemes. Another worthy element of the FFP approach is the involvement of locally trained personnel in policy implementations. Trained local land officers will serve as trusted intermediaries that *laisse* with the local communities in the identification of land parcels and adjudication of land related matters. A “train the trainers scheme” will be introduced to ensure effective and adequate supply of local land officers at affordable rates thereby maintaining adequate and sustainable capacity building scheme, drive local employment and rural development. This will also be scaled up in future in accordance to emerging realities.

⁷⁵⁷ Indicator 1:4:2 of the SDG

Successful recordation and registration of land parcels will also require the adoption of new, innovative, effective, affordable, timely, accessible and scalable spatial framework to aid the generation of desired data, identification of parcel boundaries and effective data storage. Participatory approaches will be used to identify, verify and record prevailing tenurial rights and interests on the identified parcels. Varying techniques can also be adopted in mapping out lands within the communities, while the choice of preferred techniques will be informed by communities strengths, peculiar challenges and definitive attributes. These preferred techniques will include the use of high-resolution satellite imagery, drones and point cadastre where necessary.⁷⁵⁸ Generated data will be stored in the STDM. In addition, the flexible attribute of the FFP approach allows for data relativity. Thus, accuracy of data and boundaries at the inception may be lowered, particularly on rural lands where land values are low. Thus, participatory and physical identification of parcel boundaries and objects captured on the satellite imageries will be sufficient for the recognition and recordation of subsisting tenurial rights. Individuals and groups can however opt for more conventional and accurate delineation of their plots and boundaries at their own expense.

9.7: Conclusion

This chapter has succeeded in explaining the meaning of and reasons for the adoption of the FFP land administration concept along with its other related land tools like Continuum of Rights and STDM. It further identified and mapped out the need and modalities for constitutional amendment to expunge the current dysfunctional Nigerian Land Use Act and its land nationalisation principles from the Nigerian constitution, thereby replacing it with a new legal framework that would allow for eventual decentralisation of the Nigerian land administration system. It also identified and adopted the quasi-homogenous zonal structures upon which the devolved land administration responsibilities will be vested, this however created the room for

⁷⁵⁸ Point cadastre is a system of cadastre that allows for the use of geographic points for the representation of land plots. This provides simple cadastral solutions when combined with satellite imagery, free topographic maps and managed with cloud-based Geographic Information Services (GIS). For more information on Point Cadastre, see Antwi, Robert et al, 'The Requirements for Point Cadastres', (2012) FIG Working Week 2012; Knowing to manage the territory, protect the environment, evaluate the cultural heritage Rome, Italy, 6-10 May 2012.

<https://www.fig.net/resources/proceedings/fig_proceedings/fig2012/papers/ts08i/TS08I_antwi_bennett_et_al_5612.pdf>. Accessed 09/09/2018

possible design and adoption of zone-specific land administration system reflective of local peculiarities for Eastern Nigeria.

Thereafter, a novel, workable, zone-specific and responsible land administration model reflective of the peculiar social realities of the Igbo people of the Eastern Nigeria was designed and introduced using guidelines from the principles of the FFP, Continuum of Rights and STDM framework. In doing this, it inculcated some of the success stories of the latest and on-going Ghanaian land reform exercises, particularly the 9 major achievements of the Ghanaian LAP project that were examined in chapter 8 of this thesis to enrich the dept of the legal framework to boost the equitable, secure and sustainability of the proposed land administration framework which will invariable result in secure land rights particularly for women and other vulnerable groups in Eastern Nigeria.

CHAPTER 10: THE CONCLUSION

A NOVEL LAND ADMINISTRATION MODEL FOR EASTERN NIGERIA

This thesis reviewed the complex and multi-layered land tenure systems and the opaque and hierarchical land management models in the light of the evolving socio-legal, political and economic contexts in Eastern Nigeria. The present systems have evolved through its distinctive but contrived socio-historical experimentation that is intertwined in the colonial, customary, constitutional and modern influences on land law and policy. This volatile confluence of socio-legal synergies has produced a provocative legal pluralism that is at once both promising and open to conflict. The central question in this thesis is prompted by the query of what the appropriate socio-legal land framework would be to capture and address the complex social, cultural and gender dynamics inherent in the composition of Nigerian society in relation to land. However, this is not a straightforward question because the ability of the laws to realistically respond to the challenges of inequitable land rights and the obstacles to universal access to land depends on the efficiency and reliability of land administration system. Thus, this thesis had framed the question: To what extent could the reformation and adoption of equitable and decentralised land administration system, and subsequently, statutory recognition of customary tenure rights helps in promoting rural development and security of tenure for all, particularly for women and other vulnerable groups in Eastern Nigeria?

In order to review the prevailing legal and land administration regime, the thesis examined the sources and factors that have generated these attitudes, approaches and practices to land. In Chapter 2, the thesis examined how experiences of colonialism and its aftermaths profoundly transformed the traditional perceptions, values and the processes of land administration across Nigerian state. The conversion of communal tenure system particularly to an individualist freehold model has led to eventual commodification of land with significant implications and consequences, most of which are detrimental to the survival of women, the rural poor and other vulnerable groups. Chapter 3 examines the trajectories of the fountain of the Nigerian land law, and how various contrasting legal models and approaches conflicted but continued in creating a pluralist legal system in which customary, religious land rights were not fully integrated into the Western-based land regime. In turn, this also negatively impacted on the ability of women, young people and other vulnerable members of the society to access or secure land rights. Chapter 4 outlines the piecemeal and rather unsatisfactory efforts

with limited and mixed results to create a more open, equitable and responsible land regime, as well as the consequences of the governments preferred reform approaches to the challenges of inequitable and ineffective land administration system, pointing out particularly the effects of these governmental policies to the inhabitants of the Eastern Nigeria with its customary diversity and distinctive cultural experiences. It further interrogates the extent to which legal mechanisms, particularly judicial activism, were able to protect vulnerable groups, including women from the harsh realities of land deprivation, landlessness and discriminatory customary tenurial practices. It questions the ability of the existing law, institutions and policy measures to provide effective, equitable and fit-for-purpose land administration system and guarantee security of tenure for all Nigerians.

The demand for land reform in Nigeria has continued unabated and continued to gain traction among the general populace following the failure of the prevailing legal institution and land administration model to reflect the living realities of the people, guarantee equity, effectiveness and development in Nigeria. Chapter 5 sets out to examine the major reform options available to Nigeria, and the outcome of their adoption and implementation by other African countries facing similar challenges. Chapters 6 and 7 looks at the historical synopsis of reform experimentations in Nigeria and Ghana from pre-colonial era till date, pointing out the gains and lost opportunities. Chapter 8 highlights the reform experiences in Ghana and Nigeria from a comparative perspective using the 8R Matrix for Responsible Land Management.

In chapter 9, the analysis moves to consider innovative and modern initiatives to create appropriate, responsive or responsible land administration system capable of delivering land rights to all, particularly for women and other vulnerable groups in Nigeria. The 8 principles of Responsible Land Administration, as developed by Chigbu and De Vries⁷⁵⁹ provide a sophisticated tool of analysis and prompts for developing appropriate land administration methods to adapt to the Eastern Nigerian land framework that is inclusive, transparent and efficient.

The proposed land administration model for inclusive land rights is based on design of a new zone-specific, participatory, flexible, scalable, responsive and inclusive land administration system reflective of the nuances and peculiarities of Eastern Nigeria. It should be fair but also fit-for-purpose (FFP) with the underpinning of supporting land

⁷⁵⁹ see chapter 8 for the 8R matrix of the Responsible Land Management concept.

approaches like “Continuum of Land Rights” and Social Tenure Domain Model (STDM). This would identify, review and recognise multiple land tenure rights, social tenurial claims and modes of access to land as it currently exists within the Zone. This includes the formal, informal and those socially legitimate customary tenure practices that are currently proscribed by laws in Nigeria but remain socially legitimate and are being illegally practiced by the practitioners albeit in clandestine manner, particularly by the Igbo people of the Eastern Nigeria.

The main thrust of the Responsible Land Administration (RLA) model is to recognise different categories of land users and owners, with various property flows, types of tenure and forms of rights; both primary and secondary. It should be recalled that lands in Eastern Nigeria can be owned by private individuals, families, communities, the government or in common by various groups in form of communal land. RLA concept should therefore recognise private, family, communal and public land tenures.

The current Eastern Nigerian Private or individual land tenure system promotes the dominant or preferred form of land ownership in which land is privately owned by individuals to the exclusion of others. It appears to be the most secure form of tenure system, legally recognised and fully registerable in Nigeria, but in fact it is mostly limited to elites and often excludes the poor, women, the minorities and many other vulnerable groups. Individual lands can be acquired through inheritance, purchase, gift, first settlement, government allocation or as a share from partitioned communal or family lands. It should be recalled that in time past in Igboland, land was only owned by communities, villages, families and other such groups and never by individuals.

Outright purchase of land by individuals were prohibited or restricted. However, as societies evolve, sale of land to private individuals has become a common trend and lucrative venture particularly within the urban and peri-urban areas in Nigeria. Thus, private land is now common, but cannot be exclusive, thereby giving impetus to the provisions of the Continuum of Land Rights approach. From a gendered perspective, each of these property flows mentioned above have aspects of potential discrimination that the RLA needs to anticipate.

In parallel, family land tenure system is equally prevalent, though losing their currency owing to social changes. In the pre-colonial traditional Igbo communities, land was owned by communities and families and never by individuals. Individuals only enjoyed usufructuary rights. This situation has changed extensively as many family lands now end up as individual lands following inheritance, partitioning, gifts or even outright sale

to private individuals. The ability of the RLA to recognise family tenure is also very important, and in the context of women, co-tenure or joint title with spouses or presumed joint property ownership by spouses as “tenants in common” is equally important. However, mere title and ownership rights should not be the only primary concern, other forms of tenure arrangements like rights to access, use and manage land either as rental, lease or some other arrangements must equally be considered and accommodated.

As noted earlier in chapter 3, though communal land tenure system presents a challenge to modern Nigeria, it persists and remains relevant to the local communities despite statutory efforts to favour individual tenure. In its common form, un-allotted lands are held in common ownership by the communities, kindreds, villages or extended families while members of these groups enjoy equal use rights. This form of land tenure system is rooted in the principle of inalienability and tenurial equality over jointly owned lands by all members of the group, while some appointed members of the community, mostly the titled men, village heads and the elderly are vested with the responsibility of acting as custodians and administrators of the collectively owned lands. This is a common and legally recognised form of land ownership in Eastern Nigeria and has been said to constitute the single most encouraging catalyst for increased productivities for the small and large-scale agricultural enterprises in Eastern Nigeria. Rather than rendering customary systems of these nature inferior or outdated, they should be seen as an alternative and worthy source of cohesion in agrarian societies. Such also represents an embodiment of moral and social justice as it gives every member of the group equal access to means of subsistence.⁷⁶⁰ Yet, customary norms that are patriarchal and discriminatory in nature need to be modified to conform to the principles of gender equality and land rights for all.

In Public or State land tenure, state owned lands are usually available to some private individuals, investors, cooperative societies, agencies of the government and such other groups that might request land from the government. On approval, such land can be used for varieties of enterprises, including residential, industrial and large-scale agricultural schemes. Most state lands were former communal lands, particularly those lands under dispute, that were forcefully expropriated by the government with little or no compensation as the expropriation of communal lands are far more easily accomplished and justified than the expropriation of individually owned lands. It is in

⁷⁶⁰ Ibid., (n.119)

the area of public land that perhaps the greatest challenges arise with respect to equal and gendered access, as transparency and accountability needs to be strengthened.

Matters of land tenure systems and methods of land access and acquisition are of particular importance to Igbo people of the Eastern Nigerians owing to the meaning, value and the degree of respect they accord to land. Ownership of land and the processes of its acquisition deserve clear examination and understanding. An in-dept review of same is necessary for the development and adoption of responsive and FFP land administration system for the Zone. The major methods of land acquisition, its forms of access and the prevailing status of these methods before the extant land laws in Nigeria need to be examined, understood and considered on their individual merits, and the outcome of such exercise must be recognised in any attempt aimed at enthroneing FFP and Responsible Land Administration system in Eastern Nigeria.

Inheritance is the most common and most popular mode of land acquisition, yet its access for different groups, particularly women is problematic particularly in Eastern Nigeria, and by perhaps, the entire Nigerian state. The full spectrum of the processes and dynamics of land inheritance system as practiced by the Igbo people of Eastern Nigeria has been thoroughly examined in chapter 4 of this work. Available literature on land inheritance models operational in Eastern Nigeria revealed that land belong to families and communities, particularly all members of these groups both the dead, the living and the unborn. However, inmost part of the region, male children irrespective of their age, enjoy the right of property inheritance to the exclusion of their female counterparts. Thus, the land administration system, drawing from constitutional and legal principles, and supported by the judiciary and civil society, should address the inherent propensity toward gender discrimination in access to land.

In the time past, the sale and purchase of land was perceived as a taboo in Eastern Nigeria, and of course, within various African communities. However, the dynamic nature of culture and increasing need for finances for various reasons has eroded this customary tradition of non-disposability of land.⁷⁶¹ Also, first settlement or clearance of virgin forests was one of the most recognised ways of acquiring customary lands in time past in Nigeria. This entails the act of clearing virgin, unoccupied lands either for agricultural purposes or for the erection of new buildings and new settlements. This method of land acquisition is inheritable and recognised in law in Nigeria, however, it

⁷⁶¹ See chapter 2 of this work for analysis on the position of land in pre-colonial African States.

has literally gone into extinction in view of non-availability of unclaimed virgin lands.⁷⁶²

During the era of inter-tribal wars and strife, land could be acquired through the conquest of a community by another superior community as was the case with the Uthman Dan-Fodio led jihadist war of conquest against the Hausa tribe and their lands. This method of land acquisition is also no longer practiced in Nigeria, however, all lands acquired in the past through this process remain legitimate, inheritable and recognised. Presently, the constitution sets out clear protection of land rights against any form of conquest, land grabbing and forcible eviction.

Gifts of land is another legal method of land acquisition practiced in all parts of Nigeria. It involves a grant or absolute transfer of land from grantor or land owner (usually relatives, friends, families or communities) to the grantee who may be either a relative, member of the group or stranger.⁷⁶³ Land gifting has become very rare in recent time due to lower personal incomes, the increasing market value of lands both within the rural and urban areas, land scarcity and the unprecedented amount of pressure on land resulting from increased investments in land and high population. However, gifts need to be closely regulated or monitored as they are often used to circumvent legal rights or genuine claimants, particularly women. Land lease is also another legal way of accessing land in the whole of Nigeria and it involves the transfer of interests in land from the landlord to the tenant in exchange for rent. This is a registerable instrument and the creation of valid subleases in Nigeria equally require the consent of the Governor in cases of Statutory Right of Occupancy or urban lands, and the Local Government in cases of Customary Rights of Occupancy or rural lands. Land leases are limited to number of years and the law is clear on who can create valid lease. While the similar caveat of need for transparency is applicable, it should also not be bureaucratic or limited, in order that all sections of society, especially women can access land, though like other property flows, access to credit and finance is equally relevant.

Modern Land Administration systems generally tend to struggle with some customary land practices such as land pledges. This arises where an owner-occupier of land, in an attempt to secure an advance of money or its worth, offers the possession and use right of the land to the pledged creditor pending when the debt is fully repaid. In customary law parlance, a pledge will always remain a pledge and can never ripen to full

⁷⁶² Epiphany azing (n.541)

⁷⁶³ Smith, I. O (n.550)

ownership irrespective of the duration. The land remains perpetually redeemable and must be returned to the pledgor devoid of any encumbrances at the full repayment of the debt.⁷⁶⁴ Thus, one significant element of customary law remains its ability to provide security against unwarranted eviction on pledged lands and other local land loan transactions.⁷⁶⁵

Ultimogeniture as observed by the Igbo people of Eastern Nigeria is another traditional form of land acquisition worthy of consideration. In the time past among the Igbos, it was a common trend for spouses to live separately in different huts (traditional form of condominium) within the family compound because of polygamy which was also a common practice. These huts and all land surrounding them remain the exclusive preserve of the main occupant (wife) of each of the huts. However, at the demise of the wife, the hut and the surrounding land are expected to be inherited by the last son of the woman to the exclusion of other members of the family.⁷⁶⁶ There is however, a sharp decline on the youngest son's right of absolutism in the inheritance of deceased mothers' huts, houses and surrounding lands due to sharp decline in polygamy and the modern system of co-habitation of husband and wife, as against the age long Igbo traditional practice of separate houses or huts for spouses.⁷⁶⁷ This is one of the few examples of customary tenurial practices that discriminate against both male and female. The discriminatory and gender implications of this practice also need critical review.

Land exchange, on the other hand, involves the transfer of one or more parcels of land by two consenting individual land owners, families or communities to each other in a mutual manner. This is a form of trade by barter on land, and it is legally recognised in all parts of Nigeria. Reasons for land exchange usually include the desire to transfer plots of land close to the location of the new owner, the need for the acquisition of a desired, more accessible or larger parcel of land for building or agricultural purposes, or many other reasons. Monetary payments may or may not be involved, and tenurial rights acquired through exchange are inheritable and permanent.

Customary tenancy is also a form of tenurial interest common to the Igbo people of the Eastern Nigeria in which strangers or outsiders to communities where sale of land is

⁷⁶⁴ Ibid. 245- 246

⁷⁶⁵ Ibid. p. 228

⁷⁶⁶ Ibid.

⁷⁶⁷ Ibid (n.286)

either discouraged or forbidden access land for their occupation and use in perpetuity at the payment of tributes to the landowners. Customary tenants reserve the right to hold, use and enjoy lands from their landlords in peace and perpetuity until they either willingly forfeit the right or violate terms of the contract by alienating part of the land without prior consent of the overlord, fail to pay customary tribute or deny the overlord's title to the land.⁷⁶⁸ A tenant, on the other hand, cannot be made to suffer forfeiture due to minor act of misbehaviour.⁷⁶⁹ Forfeiture can be established by an order of the court at the instance of the customary overlord.⁷⁷⁰ Though payment of annual tributes has been one of the major preconditions for the establishment of customary tenancy contracts, however, it has been established that payment of tribute is not a condition precedent to the creation of valid tenancy under customary law principles, as non-payment of tributes is not inconsistent with customary tenancy institution.⁷⁷¹

There is also the distinctive Kola tenancy; a type of customary tenure holding practiced by the Igbo people of Eastern Nigeria in which landowners grant part of the portions of their lands to grantees loosely known as "tenants" for either a kola or other forms of payment arrangements other than monetary payments or in some circumstances without any considerations whatsoever.⁷⁷² Payments in money or kind are particularly not allowed.⁷⁷³ Kola tenancy accords inheritable possessory rights in perpetuity to the tenant and is legally recognised by the extant land laws in Nigeria. Kola tenancy contains all the elements of customary tenancy but without annual tributes. The tenant's pecuniary obligation is limited to the initial Kola or any agreed token that was made at the beginning of the contract, and the tenant could also exercise some limited rights of disposal like creating sub-tenancies without the consent of the landowners but cannot make absolute transfer or sale of the land.

Land borrowing is another form of customary land practice common among the Igbos which dates back to the remote antiquity. It is established when a land owner, land-owning family or community loans part of their excess land to others in need of land for particular use, usually for farming purposes. This always last for a short ascertainable duration, say one planting season, and the land must be used only for the purpose for

⁷⁶⁸ Epiphany Azinge (n.544)

⁷⁶⁹ *Lasisi & Ors v. Tubi & Ors* (n.545)

⁷⁷⁰ *Ejeanalonye & Ors v. Ikpendu Omabuike & Ors* (n.546)

⁷⁷¹ Oshio, E. P (n.522, 542)

⁷⁷² *Mojekwu v. Mojekwu*, (n.94, 270)

⁷⁷³ *Mojekwu v. Iwuchukwu*, (n.60)

which it was borrowed and can never be altered in any form, sold or converted to personal property by the borrower. Where land borrowing is established for permanent use, courts are more likely to presume customary tenancy.⁷⁷⁴

Land rights can also be acquired in Nigeria through adverse possession. Land acquisition by long possession is a legally recognised system of land rights acquisition. Such acquisition can only be possible in very rare situations in Eastern Nigeria as the act is not a common customary law practice. No amount of time of possession in Eastern Nigeria ripens the interests of a possessor to full ownership. The grantee's possessory right is guaranteed throughout the duration of the borrowing and terminates only when the purpose is accomplished.⁷⁷⁵ It is however possible to acquire interests in land in some parts of Nigeria under the doctrine of Hauzi (i.e. the doctrine of prescription) Hauzi practice is not a common practice among the traditional inhabitants of Eastern Nigeria. However, following incidences of internal migration, displacements arising from the activities of the deadly Boko Haram terrorist group, the farmers-Fulani's clashes and other insurgencies, droughts, flooding, desert encroachment and other natural disasters resulting in the establishment of camps and resettlement of internally displaced Nigerians from the troubled Northern zone to some parts of the Southern and Eastern parts of Nigeria, it may not be surprising to find a given resettled group of people with distinctive and unfamiliar tenure practices within today's Southern and Eastern Nigerian territory. Any such form of tenure arrangement must also be understudies and considered for recognition on the "Continuum of Land Rights" framework based on their individual merits.

In reviewing customary tenures systems, methods of land acquisition and access to be considered for the proposed "Continuum of Land Rights" project for Eastern Nigeria, one needs to review also the positions and implications of those peculiar social constructs, pre-existing traditional institutions and their functionalities, as well as those other customary practices of the Igbo people of the Eastern Nigeria most of which are presently proscribed by the extant laws but still enjoy social legitimacy among the practitioners. A clear example of such customary practice is the "Female Husband" customary practice of the Igbos. This customary practice accords childless women or women unable to bear male children the right to marry fellow women who will be

⁷⁷⁴ Smith, I. O, (n.550).

⁷⁷⁵ For more analysis on the nature and applicability of the adverse possession principle in Nigeria, see chapter 6 of this work.

expected to bear children for them with the consent of their husbands. This is known as an act of procuring a wife, and it accords the “female-husband” all the rights and privileges enjoyed by her male counterparts.⁷⁷⁶ The female husband pays the bride price and is regarded as the sociological father to any offspring resulting from such a union. This is obviously a traditional way of legalising what could have amounted to the birth of “illegitimate children” and also a form of social-improvisation against the pains and challenges of childlessness or a woman’s inability to give birth to male children in patriarchal Igbo communities where male children are valued more than their female counterparts. Presently, this practice is proscribed by law, however, it is still a common practice and provides locally acceptable opportunity for women to acquire full rights and interests in land among the Igbo people of Eastern Nigeria as it enjoys social legitimacy. Outright proscriptions of this nature have led to a situation where elements of the people’s way of life are allowed to fester and flounder in the dark. The poor and downtrodden, particularly those within the rural communities who are constrained by circumstances beyond their control to depend on the provisions of these outlawed customary rules of engagement are therefore deprived protection against the violation of their fundamental human rights by the state as their rights are not recognised by the extant laws. Such a review must also put into consideration, the fluidity of the Igbo customary law system. Thus, it must give room for the customary system to succeed in addressing the changing tenure related needs as well as other needs and concerns of the members of the communities, while at the same time forestall the discriminatory elements of the custom that accommodate inequality and other social vices.

Another proscribed customary practice worth mentioning is the Nrachi customary practice; this is also another customary construct of the patrilineal Igbo people of Eastern Nigeria through which the disinherited unmarried Igbo women can acquire land rights in their communities. Though customarily disinherited, an unmarried woman can acquire these rights if she subjects herself to the customary rule of “Nrachi”. A daughter who performs the “nrachi” ceremony automatically takes the position of a “man” in her father’s house. Though the Court has ruled that female children could inherit from the estate of their deceased fathers without subjecting themselves to the “repugnant” customary practice of “nrachi”. However, this customary practice is still in operation in some parts of the Eastern Nigeria the courts’ pronouncements notwithstanding, as it

⁷⁷⁶ Achebe Nwando, (n.158)

enjoys social legitimacy among the various practitioners, particularly among the poor rural dwellers.

It should be noted that the reasons for the inclusion of these statutorily proscribed customary approaches to land acquisition (i.e. “Female husbands” and “Nrachi” customary practices) among the list of land acquisition systems to be considered under the FFP administration system and Continuum of Rights framework is born out of the conviction that rules and legal systems should be formulated in ways that reflect the peculiar practical realities and lived experiences of the concerned, as against the idealistic theorization and national imposition of set of rules from the above without recourse to local nuances.

Admittedly, the structural frameworks and the *modus operandi* of most customary law practices, like the ones mentioned above, are fraught with problems, particularly on their discriminatory attitude towards women, children and other vulnerable groups in decision making, property management and ownership rights particularly through inheritance. However, practitioners and stakeholders on land matters must be careful not to settle for the simplistic narrative which assumes that all aspects of the customary law provisions bothering on women’s land rights and tenure relations intrinsically contain chauvinistic elements discreetly fashioned to particularly discriminate against and subjugate women. There are instances where customary law and tenure provisions discriminate against cross section of both male and female inhabitants. Clear examples could be seen from the customary practices of “primogeniture” and “ultimogeniture” of the Igbos of Nigeria, as examined in chapter four of this thesis which accords rights of property inheritance to the first and last male children of the deceased property owners to the exclusion of other members of the family, thus discriminating against male and female descendants alike. There is also the customary practice of matrilineal inheritance in which devolution of deceased estate follows female bloodline.⁷⁷⁷

Even in circumstances where customary law provisions contain obvious discriminatory elements against some members of the society, the idea of “throwing away the baby with the bathwater” is erroneous. There is need for better understanding of the dynamics of customary law provisions and mapping out of local practices, recognition of the diverse nature of customary laws and identification of aspects of its provisions that promote equality of all sexes, peaceful co-existence, particularly those aspects that

⁷⁷⁷ See chapter 4 of this work for the full analysis of customary patterns of property devolution and inheritance.

encourage the involvement of women and other vulnerable groups in the management and administration of land, as well as improve women's access to land, their participation in decision making and tenure security. There is an urgent need for governments and indeed all stakeholders in land matters in Nigeria to devise modalities for improving on the strengths and benefits inherent in these available customary infrastructures and practices, while at the same time, rejecting those elements that are inconsistent with natural justice, equity and good conscience. Recent campaigns for paradigm shift in land administration in many developing countries is informed by the notion that laws and legal systems (formal and informal alike) should have practical meaning, use and applicability to the lives of the people by reflecting prevailing living realities and encompassing already existing local institutions, rules, social and moral constructs guiding societal order, household relationships and community cohesion. States' land administration systems and idea of secure tenure should reflect and recognise the realities of existing land use and property formats common to and observed by most of the people as against pandering to the whims and caprices of the privileged few, thus forming a hybridity of the prevailing social practices and the states' statutory provisions. Anything contrary to this has the ability to undermine the legitimacy of the government, the provisions of rule of law and the people's ability to trust, respect and obey governmental directives. This informs the reason why most Nigerians, traditional institutions and their leaderships, particularly those within the Eastern part of Nigeria, has consistently refused to subject and abide by the provisions of the Land Use Act of 1978.⁷⁷⁸

In like manner, any law aimed at increasing the tenure security of any section of the Nigerian populace must reflect, recognise, respect and accord statutory recognition to elements of the pre-existing rules, institutions and prevailing social constructs common to and observed by the majority of the concerned Nigerians. It must be recalled that these pre-existing customary institutions, rules, practices and social legitimate constructs fill some lacunas in social governance and administration of the state; these are often important functionalities which conventional approaches and states' statutory legal provisions are ill equipped to handle. In various instances, these traditional institutions and their customary leaders remain the only form of authority that the poor and rural dwellers have genuine access and trust on. Many of these traditional leaders have been performing various functionalities and meeting societal needs as community

⁷⁷⁸ See chapter 6 of this paper

administrators, judges, land administrators and property registrars. Whereas some of these leaders have given a poor account of themselves in the performance of their duties and must be called to book, others have done fantastic jobs in many areas, particularly in conflict resolution, maintenance of peace and justice in their various communities. These realities need to be recognised by the Nigerian government. Failure to recognise these lived realities risks the law being perceived or misconstrued as unjust; an element of the Nigerian government's power domination strategy; an instrument for the subjugation of the poor Nigerians in the interest of the privileged few or strategy for ethno-religious domination and marginalisation of minor ethnic groups. Laws of these nature are always undermined and disobeyed by the people. Such coercive imposition from the central government, as was the case with the introduction of the Land Use Act of 1978 and other related legal impositions, also explains why majority of Nigerians place more premium and undiluted allegiance to their ethnic affinities, with little or no respect and appetite for national values,⁷⁷⁹ as well as fail to recognise and adhere to various aspects of the constitutional provisions and judicial proscriptions,⁷⁸⁰ an act that undermines nationalistic commitments, respect for rule of law and governmental legitimacy.

Therefore, whereas customary practices like the "Nrachi" and the "Female-Husband" practices of the Igbo people of the Eastern Nigeria may be far from being perfect, this thesis is of the opinion that adopting a reformist and incremental approach to these existing customary tenurial practices and policies, as against their outright proscription on the grounds of perceived discriminatory and inequitable attributes would be more acceptable and beneficial to the communities, particularly for those women without male children, the barren and/or unmarried women who take advantage of these customary social security provisions to acquire and enjoy, devoid of all encumbrances, full rights that were the exclusive preserve of their male counterparts within the Igbo patriarchal communities. Rather than placing a blanket proscription on practices of this nature and the customary institutions that sustain them, governments should explore the option of harnessing and leveraging the best aspects of such customary practices, recognise and enlist such as a worthy partner in effective social administration.

⁷⁷⁹ Gannon, Martin J (n.12)

⁷⁸⁰ Example of these can be seen from the refusal by cross section of Nigerian land owners to adhere to the provisions of the land Use Act, and the continued observation of both the "Nrachi" and the "Female-Husband" customary practices by the Igbo people of Eastern Nigeria despite the judicial proscriptions.

Undermining customary provisions that protect women's land rights, or in instances like the above, provide women with the opportunity to own and exercise land rights contribute in making women's access to land significantly more precarious.

It is not surprising that these practices are still being observed, albeit on voluntary grounds, by many Igbo women some of whom chose to perform the “conversion-to-manhood” rites and remain in their fathers' house as single parents, living above the discriminatory dictates of various customs and traditions, with all rights and privileges fully restored, courts' proscriptions notwithstanding. It is possible for other forms of tenure arrangements and practices to exist outside the scope and knowledge base of this work, such tenure rights will also be considered for inclusion on the Continuum of Rights framework during the review of prevailing tenurial rights in Eastern Nigeria. In view of the above analysis, this thesis proposes that while striving towards achieving robust, independent and formal secure tenurial rights for Nigerian women, particularly those of Igbo or Eastern Nigerian extraction, efforts must be intensified towards securing and scaling up the already available informal structures, tenure arrangements, interests and rights that are unarguable at the disposal of women and other vulnerable members of the society on the scale of the continuum of rights provision.

This thesis has argued that though land administration systems across the world are complex and challenging, Eastern Nigeria represents a plethora of land types, tenures and claimants that demands that its land administration system recognise the diversity, distinctness and in some cases contested validity of its land practices. The proposed land administration model does not merely recognise ‘all’ types of land tenures equally but applies several tests to see if they pass acceptable standards – not just legal, but equally social, political and economic. A particular concern is that women are denied their land rights in practice, even if the law ostensibly acknowledges them. Among women too, there are various categories who suffer from multiple discrimination, not only gender but also urban/rural, tribal, ethnic, religious, immigrant status, marital status, age, class, disability, sexuality and other identities or markers. The test of a robust land administration system for Eastern Nigeria is that it is for all its residents, at least citizens.

A responsible land administration is not merely a bundle of rules, information and propositions but equally involves the participation of all people, including grassroots women. The framing of workable land law proposals often relies on statutory improvements, policy sophistication or judicial activism. However, these are not the

core of the transformation that is required to guarantee land rights for all through the multiplicity of land practices. A sustainable model involves conscious steps in enhancing participation of empowered citizens. For example, the concrete proposal for setting up a Customary Land Authority and Customary Land Registry is expected to bridge the gap between formal and informal land regimes. However, it is the governance and the inclusion of all stakeholders from customary chiefs to women that will ensure its acceptance, success and sustainability.

The broader lessons from this research is that conventional or formal land administration systems alone cannot guarantee increased land security for all, particularly for women, the rural poor and other vulnerable groups, as these statist perspectives are rooted into distorted and opaque colonialist formulae. For example, gender justice could only be the result of recognising as well as interrogating the range of formal and customary as well as various tenure types against the lived experiences of different categories of women in changing time. Even the Sustainable Development Goals, particularly goal 1.4.2 affirms this position by pointing out how the increased land rights and tenure security of women need to be measured by both sex and tenure types, as well as perceptions of tenure security. Only through such broad engagement with all claimants of land, all meanings of land and all manifestations of land can there be a comprehensive yet proactive land rights system capable of anticipating the obstacles to land rights, enhance opportunities to expand land rights and tenure security for all, through a hybridity of customary and statutory tenures. Such hybridity is also necessary to forestall the challenges of contradiction and uncertainties arising from forum shopping, opportunistic usurpation of legal lacunas and inconsistencies arising from uncoordinated legal pluralism and distinct co-existence of statutory and customary legal systems and practices; a position that is capable of undermining the strength, effectiveness and credibility of both rules of engagement.

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